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Multinational overview of cannabis production regimes

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Preface

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The views presented here are solely those of the authors.

Key Findings

Motivation for a multinational overview of cannabis production regimes

The vast majority of countries are signatories to international treaties that prohibit the production, distribution and possession of cannabis for non-medical and non-scientific purposes. The treaties have not changed in nearly 25 years, but laws and policies pertaining to cannabis have changed in some countries. Several jurisdictions have reduced the penalties for possessing cannabis for personal use (and in some places even for home cultivation), making the maximum penalty a fine and/or participating in some type of diversion programme or community sentence. Some jurisdictions have taken more dramatic steps and changed their laws and practices with respect to producing and distributing cannabis.

In July 2013, the Research and Documentation Centre (WODC) of the Netherlands Ministry of Security and Justice asked RAND Europe to provide a multinational overview of cannabis production regimes, with a special focus on identifying and describing official statements and/or legal decisions made about production regimes for non-medical and non-scientific purposes (i.e., recreational use for adults).[1] This research report describes the ways in which these policies developed in selected countries, and the legal, legislative and voters' decisions that shaped them. It pays attention to whether there have been formal statements from these countries about whether and how the new policies fit within the existing international legal framework; however, it does not make an assessment about whether these countries are compliant with the treaties. The report also does not take a position about whether changes in cannabis production policies would be good or bad for society.

Main case studies

Our approach was to conduct detailed case studies for a small number of countries deemed to be most relevant, based on the formal statements available, and provide shorter summaries for other jurisdictions. The four case studies are Spain, Belgium, the United States of America and Uruguay.

[1] This report does not address the production of cannabis for industrial purposes. Thus, references to production for non-medical and non-scientific purposes are for 'recreational consumption', not industrial hemp. Some dislike the term 'recreational' on the grounds that motivations for non-medical/scientific use can go beyond recreation, but the alternatives are cumbersome or associated with one side or the other in advocacy debates.

1. **Spain**. Following several Supreme Court rulings, the possession and consumption of cannabis is no longer considered a criminal offence,[2] and the jurisprudence in the field has tended to interpret the existing legislation in a way that permits 'shared consumption' and cultivation for personal use when grown in a private place. While there is no additional legislation or regulation defining the scale or particulars under which cultivation could be permitted, the Cannabis Social Club (CSC) movement has sought to explore this legal space, reasoning that if one is allowed to cultivate cannabis for personal use and if 'shared consumption' is allowed, then one should also be able to do this in a collective manner. In this context, hundreds of CSCs have been established over the past 15 years, but legal uncertainty around the issue of production continues and has led to the seizure of cannabis crops and to the arrest of some CSC members.
2. **Belgium**. The Belgian CSC 'Trekt Uw Plant' ('Pull Your Plant') is a non-profit organisation initiated in 2006, following the 2005 joint guideline (as issued by the Minister of Justice and the College of Public Prosecutors) which assigned the lowest possible priority to prosecution for possession of up to three grams of cannabis or one cultivated cannabis plant. The organisation provides its members[3] the opportunity to produce cannabis collectively, one plant per person, in closed, not publicly accessible spaces in Antwerp, Luik, Brussels and Hasselt. To date, Trekt Uw Plant has been involved in two court cases. In 2006, members of the club were charged with possession of cannabis with the aggravating circumstance of participation in a criminal organisation. Although the defendants were initially condemned for the former and acquitted for the latter by a Local Court, the Court of Appeal could not pronounce itself in 2008 as the criminal prosecution had become time-barred. The second court case focused on two public protest demonstrations of Trekt Uw Plant in 2008 for which the organisation was accused of encouraging drug use. In 2010, the Court of Appeal acquitted the defendants, as, although their acts were provocative, they did not encourage drug use. In August 2013, Trekt Uw Plant consisted of 304 members. Recently, three more CSCs were established in Belgium: in Hasselt, Luik and Andenne. We did not find evidence of any legal actions against any of these four CSCs since 2010.[4]
3. **United States**. Cannabis legalisation in Colorado and Washington state in November 2012 was the result of direct vote by the citizens of those states via a mechanism called a voter initiative, which is a type of ballot measure or, less formally, a proposition. Once passed, initiatives become state law.[5] The United States has a federal system of government, and state laws do not negate or supersede federal laws; so all cannabis-related activity in these two states and throughout the United States remains prohibited by the federal (meaning national) government's Controlled

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[2] Especially when involving small quantities and used in a private place. Consumption in public places corresponds to administrative sanctions (Ley Organica 1/1992, 1992).

[3] Although it can differ slightly per CSC, in general, membership of a Belgian CSC involves signing a form stating that you are an adult (21 years or over or 18 years with a medical certificate) living in Belgium, that you are a cannabis user and aware of the Belgian Drug Law regarding cannabis (Mambo Social Club, 2013; Trekt Uw Plant, n.d.(Weed' Out, n.d.). Membership of a CSC also includes an annual membership fee.

[4] This is also confirmed by a respondent in interviews conducted for this study, as noted in Chapter 2.

[5] The cannabis initiative that passed in Colorado became an amendment to the state constitution.

Substances Act. However, customarily most cannabis enforcement has been the province of state, not federal, government. Both states now allow adults aged 21 and older to possess up to one ounce (28.35 grams) of cannabis and larger weights of cannabis-infused beverages and edibles, and Colorado allows home growing (up to 6 plants), but the significant change is the licensing of large-scale commercial cannabis businesses. The initiatives tasked state agencies with developing regimes to license and regulate for-profit cannabis firms.

In August 2013 the U.S. Department of Justice issued a guidance memorandum to federal prosecutors about marijuana enforcement. The memo listed eight enforcement priorities (e.g., not providing cannabis to youths) and indicated that "In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities […]".[6] Both states are accepting applications for cannabis business licences and retail stores are scheduled to open in Colorado in January 2014 and a few months later in Washington.

4. **Uruguay**. In July 2013, the Uruguayan House of Representatives passed draft legislation to remove the prohibition on cannabis production, distribution and possession. The Uruguayan Senate is expected to vote on this bill in November 2013. If passed, the law would create a new public agency, the Instituto de Regulacion y Control del Cannabis, to issue permits for production by for-profit companies, and maintain registries for users and those who want to (1) grow at home (up to six plants), (2) participate in collectives (between 15 and 45 members who maintain up to 99 plants at any given point) and (3) purchase at pharmacies (up to 40 grams per month produced by licensed companies).

In reviewing these case studies, four distinctions seem worth making. The first is whether the activity pertains only to distribution within cannabis clubs, as in Belgium and Spain, or whether larger scale and overtly for-profit activity is or would be permitted, as in Colorado, Washington and Uruguay. The second distinction pertains to whether government action is undertaken by the national government or by a subnational jurisdiction that has some degree of sovereignty under that country's constitution. Uruguay's situation is the only one that involves a national government passing a law with respect to activity that is

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[6] The complete passage from the memorandum: "In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above. Indeed, a robust system may affirmatively address those priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity. If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms." www.justice.gov/iso/opa/resources/3052013829132756857467.pdf.

clearly meant to be suppressed by the international treaties. The third issue is the role government employees do or do not play in production and distribution. In Belgium and Spain, there is no role. In Colorado and Washington the role is indirect, in the form of licensing and regulating but not participating in the trade. A final distinction pertains to how overt the officially banned but nonetheless tolerated activity can be. In Belgium, if the cannabis clubs are visible in the manner of Trekt Uw Plant, law enforcement may act, albeit perhaps half-heartedly. By contrast, cannabis production and distribution in Uruguay and the United States will involve fully open activities; cannabis business will be registered with, and will pay taxes to, the government.

Official statements on cannabis production initiatives and the international legal framework

With respect to official discussions about how these initiatives fit or do not fit within the international legal frameworks, key findings include:

- The International Narcotics Control Board (INCB), the UN body in charge of administering controls on drug production and trade, responded to the developments in the United States and Uruguay by asserting that allowing such initiatives would be a violation of international law. Thus, the INCB urged the countries' authorities to take action to bring its (proposed) policies in line with the international drug control treaties.
- In the U.S. there has been very little official discussion about how legalising the recreational cannabis industry in two states and the subsequent federal response fit or fail to fit within the UN drug conventions. After the voters passed the propositions, U.S. Attorney General (AG) Holder initially stated that he would consider the "international obligations" when crafting a response. However, neither the subsequent memo from U.S. Deputy AG Cole, which described the federal position, nor Cole's official testimony at a Senate Judiciary Committee hearing about cannabis policy in September 2013 mentioned the international conventions. The leading opposition party member on the Committee, Senator Grassley, did note in his opening remarks at the hearing that "These policies do not seem to be compatible with the responsibility of our Justice Department to faithfully discharge their duties and they may be a violation of our treaty obligations". However, this topic was not broached in the Senator's questions to the Deputy AG and has not been the subject of official discussion.
- In Uruguay, some government officials have been outspoken about their reservations concerning the international drug conventions. A government statement accompanying a draft legalisation bill in 2012 noted that "the Single Convention and the policies deriving from it, were, like any other product of human culture, the result of their time, with associated potentials and weaknesses and must – today – be critically revised, modified and improved". In September 2013, a Uruguayan diplomat at a public meeting in Washington D.C. indicated that his "country 'is opting for an alternative path in the framework of a comprehensive and balanced strategy aimed at regulating the cannabis market with a proposal in accordance with national conditions to address the drug problem.' In this regard, he [Uruguayan diplomat] noted that it seeks the same objectives as those established in ratified international treaties but offers an opportunity to

update them, 'based on the faithful compliance with human rights'" (Organization of American States, 2013b).

- We have not identified any official government statements about how the CSCs in Spain and Belgium fit within the existing international drug conventions. Furthermore, the INCB did not express itself regarding the CSCs in either country.

Other production regimes

The report also highlights ten other jurisdictions where production for medical or scientific purposes is allowed or where there have been recent discussions about changing the laws concerning production of cannabis for recreational use. With respect to the latter, these proposal ranged from plans to allow home growing of cannabis for personal use (discussed in Chile, Portugal and Switzerland), to a proposal to create Cannabis Social Clubs (in Portugal) and the suggested model of state-regulated production and distribution being discussed by the Copenhagen City Council. While a few of these proposals are still currently being discussed, others have already been rejected by the competent authorities in these countries.

Belangrijkste bevindingen

Aanleiding tot het onderzoek

De meeste landen hebben de internationale verdragen die de productie, distributie en bezit van cannabis voor andere dan medische en wetenschappelijke doeleinden verbieden ondertekend. Deze verdragen zijn de afgelopen 25 jaar nagenoeg onveranderd gebleven, maar wetten en beleid die betrekking hebben op cannabis zijn in sommige landen wel veranderd. Een aantal rechtssystemen heeft de straffen op het bezit van cannabis voor persoonlijk gebruik (en sommige rechtssystemen zelfs voor thuisteelt) verlaagd, waarbij de maximumstraf is vastgesteld op een boete en/of het deelnemen aan een speciaal programma of een taakstraf. Een aantal rechtssystemen heeft verregaande stappen genomen door de wetten en werkwijzen voor cannabisteelt en cannabisdistributie te veranderen.

In juli 2013 heeft het Wetenschappelijk Onderzoek- en Documentatiecentrum (WODC) van het Nederlandse Ministerie van Veiligheid en Justitie RAND Europe opdracht gegeven een multinationaal overzicht van initiatieven tot cannabisteelt op te stellen, met een specifieke focus op het identificeren en omschrijven van officiële standpunten en/of juridische uitspraken over deze initiatieven voor andere dan medische of wetenschappelijke doeleinden (d.w.z. recreatief gebruik voor volwassenen).[7] Dit onderzoeksrapport beschrijft hoe deze initiatieven zich hebben ontwikkeld in een aantal geselecteerde landen, daarbij met name lettend op het juridische en wetgevende kader en met inachtneming van democratische beslissingen (de zogeheten *voters' decisions* in de V.S.). Het rapport bekijkt tevens of er in deze landen officiële uitspraken zijn gedaan over of en hoe het nieuwe beleid past in het internationale juridische kader. Dit rapport beoordeelt echter niet of deze landen voldoen aan hun internationale verdragsverplichtingen. Dit rapport doet tevens geen uitspraken over de gevolgen van deze veranderingen in beleid betreffende cannabisteelt voor de maatschappij, in positieve noch negatieve zin.

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[7] Cannabisteelt voor industriële doeleinden is niet meegenomen in dit rapport. Derhalve heeft cannabisteelt voor andere dan medische en wetenschappelijke doeleinden betrekking op 'recreatief gebruik', niet industriële hennep. Sommigen zijn van mening dat de term 'recreatief gebruik' niet passend is aangezien beweegredenen voor andere dan medische en wetenschappelijke doeleinden verder reiken dan recreatie alleen. Echter, aangezien alternatieven omslachtig zijn of geassocieerd worden met een bepaalde voorkeur in het cannabis debat, wordt in dit rapport 'recreatief gebruik' aangehouden.

Belangrijkste casestudies

Dit onderzoek heeft gebruik gemaakt van gedetailleerde case studies voor een klein aantal relevant geachte landen, gebaseerd op het aantal formele uitspraken dat beschikbaar was. Voor een aantal andere rechtssystemen worden kortere samenvattingen gepresenteerd.

Dit rapport geeft gedetailleerde beschrijvingen van Spanje, België, de Verenigde Staten en Uruguay.

1. **Spanje**. Het bezit en gebruik van cannabis wordt na verscheidene uitspraken van het hooggerechtshof niet langer beschouwd als een strafbaar feit.[8] Daarnaast heeft de jurisprudentie over het algemeen bestaande wetgeving als zodanig geïnterpreteerd dat het 'gezamenlijk gebruik' (*shared consumption*) en teelt voor persoonlijk gebruik in het privé-domein toestaat. Hoewel er geen aanvullende wet- of regelgeving is die de omvang of bijzonderheden vaststelt waaronder cannabisteelt kan worden toegestaan, heeft de zogenoemde Cannabis Social Club (CSC)-beweging getracht deze juridische ruimte te verkennen. Daarbij is geredeneerd dat als 'gezamenlijk gebruik' en cannabisteelt voor persoonlijk gebruik is toegestaan, dan moet cannabisteelt op collectieve wijze ook mogelijk zijn. Met deze gedachte zijn er de afgelopen vijftien jaar honderden CSC's opgericht, ondanks dat de rechtsonzekerheid rondom deze kwestie voortduurt en heeft geleid tot de inbeslagname van cannabisoogsten en arrestatie van een aantal CSC leden.
2. **België**. De Belgische CSC 'Trekt Uw Plant' is een vereniging zonder winstoogmerk, opgericht in 2006, naar aanleiding van een gemeenschappelijke richtlijn die in 2005 werd uitgegeven door de minister van Justitie en het College van Procureurs-Generaal. Deze richtlijn kent de laagst mogelijke prioriteit toe aan vervolging voor bezit van maximaal drie gram cannabis of één geteelde cannabis plant. Trekt Uw Plant biedt haar leden[9] de mogelijkheid om gezamenlijk cannabis te telen, één plant per persoon, in besloten ruimten in Antwerpen, Luik, Brussel en Hasselt. De CSC is betrokken geweest bij twee rechtszaken. In 2006 werden de leden van de vereniging vervolgd voor het bezit van cannabis, met als verzwarende omstandigheid deelname aan een criminele organisatie. De verdachten werden in eerste aanleg veroordeeld voor het bezit van cannabis en vrijgesproken voor deelname aan een criminele organisatie. Het Hof van Beroep verklaarde de strafvordering echter vervallen door verjaring. De tweede rechtszaak had betrekking op twee openbare protestdemonstraties van Trekt Uw Plant in 2008, waarvoor de organisatie beschuldigd werd van het aanzetten tot drugsgebruik. In 2010 sprak het Hof van Beroep de verdachten vrij aangezien de acties, hoewel provocatief, niet aanzetten tot drugsgebruik. In augustus 2013 bestond Trekt Uw Plant uit 304 leden. Recentelijk zijn er nog drie CSC's opgericht in België: Mambo Social Club in Hasselt, Ma Weed Perso in Luik en

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[8] Met name wanneer dit kleine hoeveelheden betreft en het gebruik plaatsvindt in het privé-domein. Consumptie in de openbare ruimte resulteert in administratieve straffen (Ley Organica 1/1992, 1992).

[9] Hoewel het enigszins kan verschillen per CSC, lidmaatschap van een Belgische CSC houdt in het algemeen in het tekenen van een formulier, daarbij aangevend dat het een volwassene betreft (21 jaar of ouder, of 18 jaar indien men een medisch attest heeft); wonend in België; dat men een cannabisgebruiker is en dat men bekend is met de Belgische drugswet aangaande cannabis (Mambo Social Club, 2013; Trekt Uw Plant, n.d.; Weed' Out, n.d.). Een jaarlijkse bijdrage is ook onderdeel van lidmaatschap van een CSC.

Weed 'Out in Andenne. We hebben geen materiaal gevonden dat duidt op enige juridische acties tegen een van deze vier CSC's sinds 2010.[10]

3. **De Verenigde Staten**. De legalisering van cannabis in Colorado en de staat Washington in november 2012 was het resultaat van een rechtstreekse stemming door de burgers van de betreffende staten, via een zogenaamd 'kiezers initiatief'. Zodra de stemming is aangenomen worden deze initiatieven een staatswet.[11] De Verenigde Staten hebben een federaal systeem waarbij staatswetten federale wetten niet kunnen ontkrachten of vervangen. Hierdoor blijven alle cannabis-gerelateerde activiteiten in deze twee staten alsmede in de rest van de Verenigde Staten verboden onder de federale (nationale) *Controlled Substances Act*. Echter, het is gebruikelijk dat handhaving plaatsvindt door de staat zelf en niet door de federale overheid. Colorado en de staat Washington staan nu toe dat volwassenen van 21 jaar of ouder 28,35 gram cannabis mogen bezitten en grotere hoeveelheden drank en etenswaar die cannabisextract bevatten. Colorado staat thuisteelt (tot zes planten) toe. Echter, de meest ingrijpende verandering is het uitgeven van vergunningen aan grootschalige commerciële cannabisbedrijven. Overheidsinstellingen zijn belast met het ontwikkelen van regimes voor vergunningverlening en regulering van deze bedrijven.

   In augustus 2013 heeft het Amerikaanse ministerie van Justitie een richtlijn (*guidance memorandum*) uitgegeven voor de federale aanklagers over cannabis-handhaving. Dit memorandum noemde acht handhavingsprioriteiten (zoals het niet verstrekken van cannabis aan jongeren) en gaf aan dat "In rechtssystemen waar wetten zijn uitgevaardigd ter legalisering van cannabis in welke vorm dan ook en die tevens sterke en doeltreffende regelgevings- en handhavingssystemen hebben geïmplementeerd voor de teelt, distributie, verkoop en bezit van cannabis, [en] die handelen in overeenstemming met deze wet- en regelgeving, is het minder waarschijnlijk dat het de federale prioriteiten bedreigt […]".[12]

   Beide staten accepteren momenteel aanmeldingen voor zakelijke cannabisvergunningen en de opening van winkels in Colorado staat gepland voor januari 2014, waarna Washington een paar maanden later zal volgen.

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[10] Dit is ook bevestigd door een respondent in een van de interviews gedaan als onderdeel van deze studie, zoals beschreven in hoofdstuk 2.

[11] Het cannabis initiatief dat aangenomen werd in Colorado werd een wijziging op de grondwet van deze staat.

[12] De complete zin (en originele quote) luidt als volgt: "In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above. Indeed, a robust system may affirmatively address those priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity. If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms." Verkregen op 18 november 2013 via http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf .

4. **Uruguay**. In juli 2013 heeft het Uruguayaanse Huis van Afgevaardigden een wetsvoorstel aangenomen dat het verbod op cannabisproductie, distributie en bezit opheft. De verwachting is dat de Uruguayaanse Senaat in november 2013 over dit voorstel zal stemmen. De wet zal, indien aangenomen door de Senaat, een nieuwe publieke overheidsinstelling creëren, het Instituto de Regulacion y Control del Cannabis, dat vergunningen uitgeeft voor cannabisteelt door bedrijven met een winstoogmerk en dat cannabisgebruikers en thuistelers registreert. Dat laatste wil zeggen, diegenen die: (1) cannabis planten thuis willen telen (tot zes planten), (2) willen deelnemen aan collectieve initiatieven (tussen de 15 en 45 leden die tot 99 planten hebben op elk willekeurig moment), en die (3) cannabis willen aanschaffen bij een apotheek (tot 40 gram per maand, geproduceerd door bedrijven met een vergunning).

Uit de analyse van de casestudies komen enkele verschillen naar voren tussen de initiatieven. Het eerste verschil heeft betrekking op de distributie van cannabis: of deze alleen plaatsvindt binnen cannabisclubs, zoals in België of Spanje, of dat het grotere en openlijke distributie met winstoogmerk betreft of zal worden toegestaan, zoals in Colorado, Washington en Uruguay. Het tweede verschil is het overheidsniveau waarop actie wordt ondernomen. Dit kan de nationale overheid zijn, of een lager niveau dat in de grondwet een bepaalde mate van soevereiniteit geniet. Uruguay is het enige voorbeeld waar de nationale overheid wetten opstelt die betrekking hebben op de activiteiten die door de internationale verdragen worden verboden. Het derde verschil bestaat in de rol die overheidsfunctionarissen wel of niet vervullen in productie en distributie. Er bestaat geen rol in België en Spanje. In Colorado en Washington is die rol indirect, door regulering en vergunningverlening, maar hebben overheidsfunctionarissen geen deelname aan de handel. Een laatste verschil bestaat in mate van openheid waarin de officieel verboden, maar niettemin getolereerde activiteiten worden ondernomen. Als in België cannabisclubs zo zichtbaar zijn als Trekt Uw Plant, dan kunnen er wettelijke handhavingsmaatregelen volgen, al zijn deze wellicht halfslachtig. In contrast hiermee staan de openlijke maatregelen die worden getroffen in Uruguay en de Verenigde Staten waar cannabisondernemingen worden geregistreerd bij, en vervolgens belasting betalen aan, de overheid.

Officiële verklaringen over initiatieven tot cannabisteelt en het internationaal juridisch kader

Uit de officiële discussies en stellingnames over hoe bovenstaande initiatieven passen binnen de internationale wettelijke kaders kan het volgende worden afgeleid:

- De *International Narcotics Control Board* (INCB), het VN orgaan dat belast is met de uitvoering van controles op de productie van en handel in drugs, heeft op de ontwikkelingen in Uruguay en de Verenigde Staten gereageerd door te stellen dat deze initiatieven in strijd zijn met internationale wetgeving. De INCB spoort de autoriteiten van beide landen daarom aan om maatregelen te nemen die noodzakelijk zijn om hun beleid in lijn te brengen met de geldende internationale verdragen op drugs controle.
- Binnen de Verenigde Staten is weinig discussie over de vraag of de legalisering van de cannabisindustrie voor recreatief gebruik in de twee betreffende staten en de daaropvolgende federale reactie wel of niet in strijd zijn met de drugsconventies van de VN. Nadat de

stemgerechtigden de voorstellen hadden goedgekeurd, heeft *U.S. Attorney General* (minister van Justitie) Holder in eerste instantie verklaard dat hij de 'internationale verplichtingen' in overweging zou nemen in de formulering van zijn reactie. Echter, in de daaropvolgende memo van *U.S. Deputy Attorney General* (onderminister) Cole, waarin de positie van de federale overheid werd beschreven, zijn de internationale conventies niet genoemd. Dit was evenmin het geval in een officiële verklaring van Cole bij een hoorzitting van de Senate Judiciary Committee in september 2013 over het cannabisbeleid. Senator Grassley, lid van de oppositiepartij die zitting heeft in het Committee, merkte in zijn openingsrede echter wel het volgende op: "Het beleid lijkt niet in overeenstemming met de verantwoordelijkheid van het Departement van Justitie om getrouw zijn taken te vervullen, en het beleid overtreedt wellicht onze verdragsverantwoordelijkheden". Dit onderwerp werd evenwel niet aangekaart in de vragen van de Senator aan de *U.S. Deputy Attorney General* (onderminister) en is daarom geen onderwerp van officiële discussie.

- In Uruguay hebben verschillende functionarissen openlijk hun twijfels geuit over de internationale drugsconventies. Een begeleidende overheidsverklaring bij een wetsvoorstel uit 2012 vermeldt dat "het Enkelvoudig Verdrag en de daaruit voortvloeiende beleidsmaatregelen, zoals ieder product van menselijke cultuur, een product van hun tijd waren, met de daarbij horende potenties en tekortkomingen en – heden ten dage – kritisch dienen te worden gereviseerd, aangepast, en verbeterd". In september 2013 gaf een Uruguayaanse diplomaat op een publieke bijeenkomst in Washington DC verder aan dat zijn "land 'een alternatief pad heeft gekozen binnen het raamwerk van een uitvoerige en gebalanceerde strategie, die bedoeld is om de markt voor cannabis te reguleren, dit door middel van een voorstel dat in overeenstemming is met nationale voorwaarden om het drugsprobleem aan te pakken'. In dit verband gaf hij [Uruguayaanse diplomaat] aan dat deze aanpak dezelfde doelstellingen nastreeft als de doelstellingen die zijn vastgelegd in geratificeerde internationale verdragen. Maar dat hun aanpak toch de mogelijkheid biedt om het aan de huidige tijd aan te passen 'waarbij rekening wordt gehouden met de mensenrechten'" (Organization of American States, 2013b).
- Wij hebben geen officiële overheidsstandpunten kunnen vinden over hoe de CSC's in Spanje en België passen binnen de bestaande internationale drugs conventies. Bovendien heeft de INCB zich niet uitgesproken over de CSC's in deze landen.

Overige regimes voor cannabisteelt

Dit rapport belicht ook tien andere rechtssystemen waar de teelt voor medische of wetenschappelijke doeleinden is toegestaan, of waar recentelijk debatten zijn gevoerd over het aanpassen van de wetgeving voor de teelt van cannabis voor recreatief gebruik. In het tweede geval variëren de voorstellen van legalisering van thuisteelt van cannabis voor persoonlijk gebruik (zoals besproken in Chili, Portugal en Zwitserland) tot een voorstel voor de oprichting van Cannabis Social Clubs (in Portugal). Een voorstel voor door de overheid gereguleerde productie en distributie wordt besproken in de gemeenteraad van Kopenhagen. Enkele van deze voorstellen worden momenteel besproken, anderen zijn reeds verworpen door de bevoegde autoriteiten in deze rechtssystemen.

1. Introduction

Virtually all countries prohibit the production, distribution, and possession of cannabis for non-medical and non-scientific purposes. For many this prohibition can be tied to the 1961 Single Convention on Narcotic Drugs, the cornerstone of modern-day drug control. Over 180 countries are party to the version of the Single Convention that was amended in 1972 and so are required by this convention to make the production, trade and possession of cannabis for non-scientific and non-medical purposes a "punishable offense."[13] The 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances further provided that possession of any controlled substance for non-scientific and non-medical purposes "was to be made not just a punishable offense, but specifically a criminal offense under criminal law."[14]

While the international treaties related to cannabis have not changed in nearly 25 years,[15] laws and policies pertaining to cannabis have changed in some countries, especially at the state or regional level.[16] A number of jurisdictions have reduced their penalties for possessing cannabis for personal use, making the maximum penalty a fine and/or participation in some type of diversion programme or community sentence. Other jurisdictions have reduced the penalties associated with home production or decided to make it a very low enforcement priority. There are also a small, but growing, number of jurisdictions that are experimenting with, or seriously considering, allowing cannabis production for recreational use, ranging from collectives to commercial enterprises.

In July 2013, the Research and Documentation Centre (WODC) of the Netherlands Ministry of Security and Justice asked RAND Europe to provide a multinational overview of cannabis production regimes, with a special focus on identifying and describing official statements and/or legal decisions made about production regimes for non-medical and non-scientific purposes (i.e., recreational use for adults).

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[13] *Cannabis* is defined under Article 1, §1(b) of the 1961 Single Convention as: "the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops) from which the resin has not been extracted, by whatever name they may be designated". Furthermore, under Article 1, *cannabis plant* means "any plant of the genus Cannabis" and *cannabis resin* means "the separated resin, whether crude or purified, obtained from the cannabis plant".

[14] The Netherlands ratified this treaty with a reservation concerning this clause.

[15] The 1988 convention entered into force in 1990.

[16] For some countries (e.g., the Netherlands and the U.S.) the changes to cannabis policy and practice started nearly four decades ago (MacCoun & Reuter, 2001; Van Laar & Van Ooyen-Houben, 2009).

For select countries, the report describes the ways in which these cannabis production regimes developed as well as the legal, legislative, and voters' decisions that shaped them. It pays attention to whether there have been formal statements from these countries about whether and how the new policies fit within the existing international legal framework; however, it does not make an assessment about whether these countries are compliant with the treaties. The report also does not take a position about whether changes in cannabis production policies would be good or bad for society.

Approach for selecting countries

Our approach was to conduct detailed case studies for a small number of countries deemed to be most relevant, based on the formal statements available, and provide shorter summaries for other jurisdictions. It was not feasible to perform a comprehensive review of cannabis production regimes for nearly 200 countries. In order to identify relevant initiatives, we started our research by contacting international experts and consulting a number of resources which present information about cannabis production regimes for multiple countries. Examples include:

- Decorte, T., Potter, G., Bouchard, M. (eds) (2011). World Wide Weed: Global Trends in Cannabis Cultivation and its Control. London: Ashgate.
- European Monitoring Centre for Drugs and Drug Addiction, specific country profiles (www.emcdda.europe.eu).
- European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) (2008). Cannabis Reader: Global Issues and Local Experiences. Monograph series 8.
- International Society for the Study of Drug Policy Grey Literature Bibliography. http://www.issdp.org/bibliography.php
- Room, R., et al. (2010). Cannabis Policy: Moving Beyond Stalemate. Oxford: Oxford University Press.
- United Nations Office on Drugs and Crime (2006). World Drug Report (Contains an extended section on the global cannabis situation).
- United Nations Office on Drugs and Crime (2013). World Drug Report.

We also consulted both open-source and subscription-only bibliographic databases such as Criminal Justice Abstracts and Social Science Abstracts. In addition to these databases, we searched OpenSIGLE and Google Scholar in order to identify other documents, such as papers or reports and research by think tanks, government departments, international organisations, professional associations and so forth. Since many of these policy changes are recent or are currently being discussed, we also consulted national newspapers and other media sources. Key search terms (mostly linked to a particular country) included, for example:

- Cannabis production OR cultivation
- Cannabis Social Club
- Drug law international treaties AND cannabis production OR cultivation
- Jurisprudence cannabis production OR cultivation

The search terms were, where applicable, translated into the relevant languages in order to broaden the scope of the search. Furthermore, for the specific case study countries, we consulted government websites, National Focal Point websites and, where applicable, (case) law databases. Moreover, in order to identify other official statements on how these cannabis production initiatives fit or do not fit within the international legal framework, the following websites were consulted:

- Commission on Narcotic Drugs (CND) (http://www.unodc.org/unodc/en/commissions/CND/session/cnd-documents-index.html)
- International Drug Policy Consortium (IDPC) (http://idpc.net/)
- International Narcotics Control Board (INCB) (http://www.incb.org/)

After the first scoping exercise, and in consultation with the WODC and our expert panel, we focused our detailed case studies on four countries for which official statements were available and that were relatively well documented. RAND made the final decision about which countries would be considered and which would be the subject of detailed case studies. These countries were Spain and Belgium for their Cannabis Social Clubs, the United States of America for the commercial cannabis industries being developed in Colorado and Washington, and Uruguay for its proposed cannabis reform which passed in the House of Representatives and awaits a vote in the Senate.[17] Countries highlighted for medical and/or scientific production include Canada, Chile, Czech Republic, France, Germany, Israel, Switzerland and the United Kingdom.[18] Through our first inventory search we also identified jurisdictions that have considered or are considering proposals for recreational production: Chile, Denmark, Portugal and Switzerland.[19]

Key terms and concepts

This section clarifies some key terms and concepts useful for the discussion which follows.

- **Decriminalisation, depenalisation and legalisation**. Three terms are used and sometimes misused in reference to liberalisation of drug laws: decriminalisation, depenalisation and legalisation. At least under English systems of law, decriminalisation is a common term, not one restricted to drug policy, and literally means removing *criminal* penalties. The decriminalised activity may still be banned by law, but violations are merely civil infractions. Parking illegally is a familiar example. Confusingly, the term 'cannabis decriminalisation' has often been used to describe reforms that (1) reduced the crime's status from a felony to a misdemeanour offence

[17] We did not thoroughly examine the legal situation of cannabis production regimes in Asia (e.g, Cambodia, India, Nepal and North Korea) or assess whether or not there had been formal government responses (at the national and sub-national level). For further information on India, see Charles (n.d.) and Room et al. (2010).

[18] The chapter focused on medical/scientific production is not intended to be exhaustive; there are other jurisdictions throughout the world that make allowances for cannabis production for these purposes. Our goal was to provide summaries for countries and jurisdictions with particularly noteworthy production regimes (e.g., medical cannabis in Israel). The major contribution of this report is describing cannabis production regimes for producing cannabis resin and flowers for non-medical and non-scientific purposes.

[19] Note that these proposals for recreational production were or will soon be formally submitted before parliament or local government. These proposals are included to indicate other (recent) developments, yet these are described in short since limited government statements were available.

and/or (2) eliminated incarceration as a possible sanction, even though misdemeanours are crimes and some can be punished by incarceration. The term 'depenalisation' is (mostly) specific to the context of drug policy reform, and while some authors seek to differentiate it from decriminalisation (e.g., by using it to describe any reduction in penalties (MacCoun and Reuter, 2001), it is now confusingly used interchangeably with decriminalisation. Legalisation literally means making an activity legal, not just not-a-crime; so parking at a meter without paying has not been legalised, even though it is not a crime.[20] One can speak of 'legalising possession and use', but customarily the word 'legalisation' alone, without qualification, refers to legalising production and supply, not just possession and use.

- **Federal versus state law in the United States.** Cannabis policy in the United States is shaped by federal (i.e., national) and state laws. Federal law has not changed; cannabis remains illegal for both medical and non-medical purposes. Essentially all cannabis-related activity is strictly prohibited by federal law, and the Supreme Court has made clear that federal drug law is enforceable everywhere throughout the country. However, most law enforcement activity in the United States - especially with respect to cannabis - is conducted by state and local governments, not the federal government. Indeed, the federal government makes only about 1% of cannabis-related arrests, and customarily has restricted itself to cases involving larger quantities (e.g., involving 100 kilograms or more), and other special circumstances (cases arising along international borders, on federal property, or concurrent with other major crimes for which the federal government has jurisdiction). Thus, as a practical matter, it is state-level laws and enforcement priorities that largely shape cannabis production regimes in the United States.
- **Law enforcement priorities**. It is also important to distinguish between the law as written and the law as enforced. Without changing the legal status of cannabis, there can be official policies to not enforce the law (as, for example, with small cannabis sales in Dutch licensed coffee shops who have to comply with regulations) or to give such enforcement the 'lowest possible priority' (e.g., as with cannabis possession in Belgium).
- **Medical cannabis**. What gets referred to as 'medical cannabis programmes' is not standardised. The area it refers to varies from U.N. compliant monopolies such as operated in the Netherlands and elsewhere, to regimes in U.S. states such as California and Colorado which allow (and collect taxes from) bricks and mortar medical 'dispensaries' that sell a wide range of products to anyone who can claim to have any of a broad range of conditions (Nunberg et al., 2011). Even within the United States there is variation across states with respect to the conditions for which medical cannabis can be used, how patients obtain permission to use, and how it can be supplied. Whereas medical cannabis is a serious business in California, with several hundred dispensaries in operation, in other states medical recommendations are effectively restricted to those with certain severe illnesses and retail stores are neither permitted nor tolerated (Pacula et al., 2013).

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[20] Some drug reform organisations speak of 're-legalising' cannabis as a reminder that hundreds of years ago many societies had no laws of any kind pertaining to cannabis, so it was legal by default. Likewise, some seek to restrict the term legalization to a completely unregulated, laissez-faire free market, and substitute some less threatening term, such as 'regulated availability,' for regimes under which suppliers would be subject to some government regulation.

The United Nations Conventions

The 1961 Single Convention on Narcotic Drugs had three main aims: "to replace by a single instrument the existing multilateral treaties in the field, to reduce the number of international treaty organs exclusively concerned with control of narcotic drugs, and to make provision for the control of the production of raw materials of narcotic drugs".[21] As noted by the Organisation for Security and Cooperation in Europe (OSCE) "Earlier treaties had only controlled opium, coca, and derivatives such as morphine, heroin and cocaine. The Single Convention [...] consolidated those treaties and broadened their scope to include cannabis and drugs whose effects are similar to those of the drugs specified" (OSCE Polis, n.d.).

According to the Single Convention, in its Article 36, at §1 (a):

> "Subject to its constitutional limitations each Party shall adopt such measures as will ensure that cultivation, production, manufacture, extraction, preparation, possession, offering, distribution, purchase, sale, delivery, brokerage, dispatch, transport, importation and exportation of drugs contrary to the provisions of the Convention shall be punishable offences when committed intentionally, and that serious offences shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty".

Therefore, a violation of the provisions of this Convention constitutes a 'punishable offence', ranging from minor sanctions to more severe penalties, such as imprisonment.

The Single Convention allowed for a transitional period in which the traditional use of some substances (such as coca leaf chewing, opium smoking, quasi-medical use of opium, or non-medical use of cannabis) would be permitted. Examples of countries that requested this special regime (Article 49) include India, Bangladesh and Pakistan (United Nations, 2013).[22]

In 1968 the International Narcotics Control Board (INCB) was set up for the main purpose of "administering controls on drug production, international trade, and dispensation" (OSCE Polis, n.d.). The INCB's own description of its role and function is that it is "the independent and quasi-judicial monitoring body for the implementation of the United Nations international drug control conventions [...which] endeavours, in cooperation with Governments, to ensure that adequate supplies of drugs are available for medical and scientific uses and that the diversion of drugs from licit sources to illicit channels does not occur" (INCB, n.d.).

The 1988 Convention against Illicit Traffic in Narcotic Drugs and Other Psychotropic Substances further emphasised that:

> "Any measures taken pursuant to this Convention by Parties shall not be less stringent than the provisions applicable to the eradication of illicit cultivation of plants containing narcotic and psychotropic substances and to the elimination of

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[21] The Single Convention is available at: http://www.unodc.org/pdf/convention_1961_en.pdf

[22] The transitional period concerning the non-medical use of cannabis ended 25 years after the entry into force of the Convention, as indicated in its Article 49 at §2 (f).

> illicit demand for narcotic drugs and psychotropic substances under the provisions of the 1961 Convention, the 1961 Convention as amended and the 1971 Convention" (Article 14, §1).

In its Article 3 (under §1 (a) (i)) a number of activities are established as criminal offences: "The production, manufacture, extraction, preparation, offering, distribution, sale, delivery, brokerage, dispatch, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provisions of the 1961 Convention as amended [by the 1972 Protocol] or the 1971 Convention". Additionally, Article 3, §1 (a) (ii) states that "the cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs contrary to the provision of the 1961 Convention [...]" is also to be considered a criminal offence. While the 1961 Convention referred to 'punishable offences', the 1988 Convention emphasised that such activities should be considered by each party as "criminal offences under its domestic law". Based on Article 14 of the 1988 Convention, parties should also "take appropriate measures to prevent illicit cultivation of and to eradicate plants containing narcotic or psychotropic substances, such as opium poppy, coca bush and cannabis plants, cultivated illicitly in its territory"(Article 14 §2).

The remainder of the report is structured as follows. Section 2 presents the case studies of Spain, Belgium, the United States of America, and Uruguay. Section 3 briefly discusses cannabis production policies in other countries for medical or scientific purposes as well as jurisdictions that have considered or are considering proposals for recreational production.

2. Cannabis production regimes for non-medical and non-scientific purposes: four case studies

2.1. Introduction

This chapter focuses on cannabis production systems for non-medical and non-scientific purposes in four countries: Spain, Belgium, the United States of America and Uruguay. The goal of the exercise is to review the legal frameworks within which the production systems have been established, where possible including other formal policy pronouncements, such as official statements from national, regional or local authorities who are involved in the drug policy of the country. Where available, case law is included as well as any discussion or considerations in relation to the international context, particularly in reference to the UN Conventions. The wider debate leading up to the current situation in these countries is also considered.

Our international research team was complemented by two American drug policy researchers who provided analytic support to the state agency tasked with developing a commercial cannabis market in Washington and closely followed the policy changes in Colorado. In addition, we conducted 12 semi-structured phone interviews with key informants familiar with cannabis production policy in the four selected jurisdictions. The group of interviewees included politicians, government officials, professors and field experts.[23] These interviews were conducted to verify the case study information, to make sure we did not miss key legal decisions or official discussions about how these policies fit or do not fit within the international legal framework in the case study countries, to ask for respondents' reflections on the current policy and to identify whether they expected (policy) changes in the short and long run. In addition to these interviews, the majority of the respondents assisted during the course of the project by verifying information or providing additional responses or materials.

[23] For confidentiality purposes, we only list the general professions and avoid referring to specific names, organisations or institutes.

2.2. Spain

2.2.1. Background on cannabis policy

Spanish Constitution and the Autonomous Communities

Spain is not a 'federal state', as under its constitution the sovereignty resides in the (Spanish) nation (Article 2, Spanish Constitution). The expression a 'State of Autonomous Communities', while not included in the current Spanish constitutional text, has been used to characterise the Spanish institutional framework, reflecting the high degree of decentralisation in the country (Colomer, 1998), which is made up of seventeen Autonomous Communities and two Autonomous Cities. According to the Spanish Constitution and the Statutes of Autonomy (i.e., the basic institutional laws of each Autonomous Community or City, as defined in Article 147 of the Spanish Constitution) a wide-ranging series of competences has been devolved to the autonomous regions (Duran, 2010). As the devolution process has been asymmetric (some Communities, especially the 'historic ones' such as the Basque country or Catalonia, have had more competences devolved than others) and subject to a continuing debate as to the proper balance between the different entities, it is hard to draw clear lines (Keating, 2009; Duran, 2010).

The drug policy debate is one such area in which the definition of respective competences has been the subject of debate. Article 149 of the Constitution reserves, *inter alia*, the administration of justice, criminal legislation, customs, defence and foreign trade to the central authorities, whereas the autonomous regions have competences in matters of social assistance, health and hygiene, among others (Article 148, Spanish Constitution). Nevertheless, there may be some flexibility as "the State may delegate to the regions part of its authority in areas reserved to its jurisdiction" (Duran, 2010). The Constitutional Court has previously connected drug matters (in that particular case, in relation to drug precursors and prevention of illicit trafficking) to the central competence regarding public security rather than to Community competences, albeit with some nuances (Botija, 2002; Sentencia 54/1990 of 28 March 1990).

Developments in cannabis laws

In Spain, cannabis is not considered to be a "very dangerous substance" and thus cannabis-related offences are subject to lower sanctions than are other drugs (Circular 1/1984 Interpretatcion del Articulo 344 del Codigo Penal, 1984; Jelsma, 2012; Mancebo, 2005; Cuesta, 2002). Following several Supreme Court rulings (for instance, sentences from 12-06-1974, 18-02-1975, 18-01-1980),[24] the possession and consumption of cannabis has no longer been considered a criminal offence,[25] and the jurisprudence in the field has tended to interpret the existing legislation in a way that permits 'shared consumption' and

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[24] For a more comprehensive list of Supreme Court Rulings on this matter, please see: 'Circular 1/1984 Interpretatcion del Articulo 344 del Codigo Penal', 1984.

[25] While the law prohibits the possession and use of cannabis "this does not result in enforcement or punishment (especially if small quantities and used in private places)" (Room, 2010). Consumption in public places corresponds nevertheless to administrative sanctions (Ley Organica 1/1992, 1992).

cultivation for personal use (when grown in a private place) (Room, 2010).[26] Assessment of whether the cultivation is considered a criminal offence depends on whether that cultivation is carried out "to promote, favour or facilitate in any other way the illegal consumption of drugs",[27] making it available to third parties – determination of which is a complex exercise (own translation, Spanish Penal Code, Art. 368). When considered a criminal offence, the Spanish Penal Code (Arts. 368–370) foresees a sentence of imprisonment of one to three years or an equivalent fine.[28] While there is no additional legislation or regulation defining the particular regime within which cultivation could be permitted (Alonso, 2011; FAC, 2010), the Cannabis Social Club (CSC) movement has sought to explore this legal space, reasoning that if one is allowed to cultivate cannabis for personal use and if 'shared consumption' is allowed, then one should also be able to do this in a collective manner. In this context, hundreds of CSCs have been established in the past 15 years in Spain. The Federation of Cannabis Social Clubs (FAC) defines a CSC as an association whose members are all of a legal age and who produce and share cannabis amongst themselves, without distributing it to third parties (FAC, 2010).[29] Nevertheless, the legal uncertainty around the issue of production (Drug Law Reform, 2013; Red Pepper, 2011; Arana, 2011) has led to the seizure of cannabis crops and to the arrest of some club members (Blickman, 2011).

2.2.2. Development of the Cannabis Social Club model

Since the early 1990s, hundreds of cannabis associations have been established in Spain, such as the Asociacion Ramon Santos de Estudios sobre el Cannabis de Barcelona (ARSEC). While these associations were initially rather disorganised experiments, the model of how a CSC should operate has progressively

[26] Cannabis production for medical and research purposes is also allowed according to Ley 17/1967. This law indicates that the regulation of cannabis production for those purposes falls under the jurisdiction of the Agencia Española de Medicamentos y Productos Sanitarios (AEMPS), which is the government agency responsible for issuing permits for production and cultivation of all substances included in Table I (wherein cannabis is listed) of the 1961 Single Convention on Narcotics Drugs and in the 1971 Convention on Psychotropic (Ley 17/1967, 1967; EMCDDA, n.d.). This agency's competences include the authorisation, monitoring and control of cultivation, harvesting, storage, production and commercialisation of this substance (Ley 17/1967, 1967). In practice, and to our knowledge, such authorisation for the cultivation of cannabis has not been granted (FAC, 2010; Barriuso, 2010). This has been confirmed by the interviewees.

[27] In the original source: "[…] promuevan, favorezcan o faciliten el consume illegal de drogas toxicas" (Spanish Penal Code, Art. 368). The formulation of 'illegal consumption of drugs' is ambiguous and may be interpreted in different ways. Ripolles & Sanchez (2012) have considered that consumption of drugs is illegal in two circumstances: when consumption is made in public places and when a consumption that had previously been authorised occurs without the request of a new authorisation.

[28] When determining the penalty, relevant aggravating and mitigating circumstances may be considered by the judge (EMCDDA, n.d.). The Penal Code mentions a long list of aggravating circumstances, including: perpetration by a public authority or official, social worker or teacher within their function; member of an organisation or association with the purpose of distributing the products or substances; participation in organised activity facilitating the commission of the offence; offences committed in official buildings open to the public, by those responsible for the building or its members of staff; the involvement of minors or disabled people; the alteration of the substance increasing health risks; significant quantities of the substance; if the activities happened near schools, universities, military barracks or prisons; and whenever violence or weapons were used (Spanish Penal Code, Arts. 369–370).

[29] The FAC has no authority to impose that definition on CSCs that wish to operate outside its guidelines.

developed. According to data from the FAC, there are currently more than 400 Cannabis Associations or Cannabis Social Clubs (CSCs) active in the country (FAC, 2010) particularly in the Basque Country and in Catalonia (Barriuso, 2011; Room, 2010). However, due to their often transient nature, it is difficult to produce an accurate estimate (Arana, 2011). While there is no specific legal instrument regulating the establishment and functioning of these Clubs (Barriuso, 2011; Arana, 2011), previous studies by academics in the field of criminal law have analysed the national legal statutes and jurisprudence and identified a number of conditions based on which a CSC would act in accordance with recurring criteria defined in case law (Sanchez & Navarro, 2000; Ripolles & Sanchez, 2012). These conditions are presented in Box 2.1 below. Accordingly, the activities of these Clubs should generally be guided by the general goals of "disassociating the use of drugs from the illegal drugs supply market", "preventing their transmission to others" and "ensuring a controlled and responsible use of the substance" (own translation, Ripolles & Sanchez, 2012).[30]

Box 2.1: Conditions for the functioning of the CSCs (as identified in previous studies)

- The CSC must aim to **reduce the harms** associated with the consumption of cannabis, decreasing for instance the risk of adulteration of the substance.
- The premises must be **closed to the public**,[31] and entrance must be only allowed to members (who should be regular consumers of cannabis).[32]
- The members must only obtain and consume the **average quantity of cannabis**. The CSC must not allow traffic of cannabis among its members.
- The cannabis obtained from the CSC by its members is for **immediate use** on the CSC premises, to prevent others from having access to the substance.
- There should be **no payment/fee** for access to the substance, or a limited one (Sanchez, 2000; Berastegi, 2005).

Note: Based on the findings from Sanchez & Navarro, 2000; Ripolles & Sanchez, 2012.

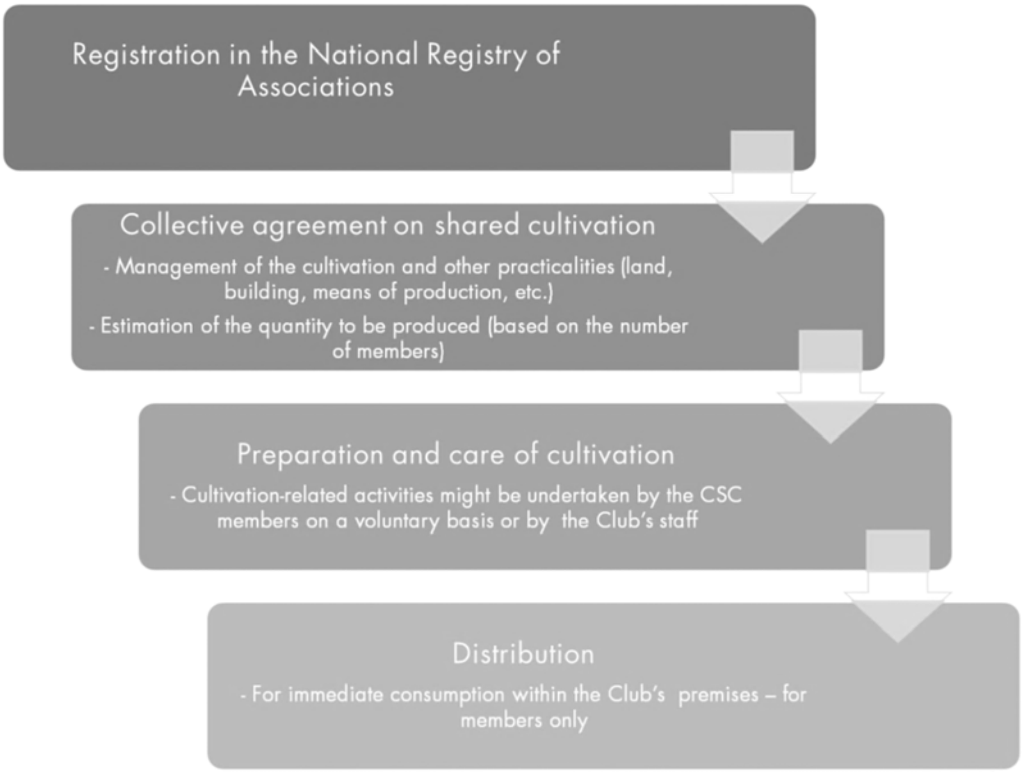
In addition, the FAC has issued good practice guidelines about how a CSC should work (FAC, 2010; Barriuso, 2011). The steps are illustrated in Figure 2.1.

[30] In the original source: "desvincular el consumo de drogas del trafico y oferta ilicitos […] impedir una difusion indiscriminada de la droga [...] garantizar un consumo controlado y responsable de la droga" (Ripolles & Sanchez, 2012).

[31] This recommendation relates to Ley Organica 1/1992, which defines the possession and use of cannabis in public spaces as a serious offence (Berastegi, 2005; Ley Organica 1/1992, 1992)

[32] According to Ripolles & Sanchez (2012), and although the majority of the court rulings has pointed out that the members should be regular users of cannabis prior to joining the Club, other sentences have not considered this to be essential.

Figure 2.1. Good practice guidelines for CSCs as proposed by the Federation of Cannabis Social Clubs (FAC)



While registration in the National Registry of Associations has not been difficult to accomplish,[33] following the 2013 guidelines from the Spanish General Prosecutor,[34] this process may nevertheless be subject to stricter criteria (Fiscalia General del Estado, 2013). The guidelines aim to unify the criteria for the intervention of the Public Prosecution departments, acknowledging that "numerous associations have been established with the purpose (declared in its bylaws) of promoting the consumption of cannabis by cultivating and distributing this substance among its members" (own translation, Fiscalia General del Estado, 2013).[35] The General Prosecutor emphasises the need to assess whether there is any "evidence of criminal unlawfulness" both in terms of the establishment of the association and in the nature of its activities (own translation, Fiscalia General del Estado, 2013).[36]

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[33] For instance, a 2010 legal comment from the Director of Cabinet of the Deputy Ministry of Security (Internal Affairs Department, Basque Country Government) confirmed that Greenfarm's bylaws (a Cannabis Social Club based in the Basque Country) were lawful.

[34] The Spanish General Prosecutor is the head of the prosecution in the Spanish territory (Fiscalia General del Estado, 2009a).

[35] In the original source: "[...] se estan constituyendo numerosas asociaciones cuya finalidad u objecto declarado en los Estatutos es promover el consumo de cannabis mediante el cultivo y la distribucion de esta sustancia entre sus socios" (Fiscalia General del Estado, 2013).

[36] In the original source: "[…] que aprecien indicios de illicitud penal en la constitucion (parrafo 1) o en la propria actividad (parrafo 2) de la asociacion" (Fiscalia General del Estado, 2013).

2.2.3. Legal status

Many Cannabis Social Clubs have been involved in criminal procedures. The Courts have often tended to consider that those Clubs' activities did not constitute a criminal offence, based on the idea that the commercial/trafficking element was not present (Arana, 2011). Nevertheless, these procedures do not guarantee that in a similar situation, a different Court would not have reached a different decision (Arana, 2011). An overview of the rationale and outcomes of some of the key court procedures involving Cannabis Social Clubs is presented below in Table 2.1.[37]

Table 2.1. Selected Court rulings involving Cannabis Social Clubs

Date	Court	CSC	Summary of decision
1997	Supreme Court	ARSEC (Barcelona)	The Court's understanding was that cultivation per se constituted a threat to public health, even if there was no intention to traffic, as there was a risk that cannabis could nevertheless be passed on to third parties.[38] The Court condemned four of the CSC's directors to a minimum prison sentence (suspended sentence) and a fine.
1997	Court of Instruction of Bilbao	Kalamudia (Bilbao)	The judge considered that the activities at stake did not constitute a criminal offence as those were "a demonstration of a collective will" in the context of the right of personal autonomy, and as those were made public given that the Club communicated its activities with the media. The case was dismissed, and the judge referred to the jurisprudential doctrine which allows 'self consumption' or 'shared consumption'.[39]
2006	Provential Court of Biskaia	Pannagh[40] (Bilbao)	The judge indicated that "this was a group of users who have been associated to avoid the risks of the illegal market".[41] The case was dismissed based on the principle of 'shared consumption' consolidated in the jurisprudence. The judge highlighted five key aspects: • The members of the Association were users of cannabis (prior to joining the Club). • Consumption took place in a closed place, to avoid transmission of the substance to non-members. • The quantities involved were small (about 239 grams per member per year). • There were a small and explicit number of members. • The action of sharing was sporadic and private and consumption takes place immediately upon delivery of the substance.

[37] This is not an exhaustive list as we are aware that there have been other judicial procedures involving other CSCs.

[38] This obstacle was later avoided by ensuring that the premises of the Cannabis Social Club (both the fields used for production and the Club's properties) were closed to public, as pointed out for instance in Sanchez & Navarro (2000) report.

[39] In the original source: "la manifestacion de una voluntad colectiva" (Juzgado de Instruccion no. 7 Bilbao, 1997).

[40] In the context of the Court dispute concerning the CSC Pannagh in 2006, a question from a member of the European Parliament (Mr Catani) was brought before the European Commission. When MEP Catania asked the European Commission for its view on the detention of members of a Spanish association which had grown cannabis for their consumption, the then Commissioner Frattini, on behalf of the Commission, pointed out that it was a

2006	Criminal Court of Huelva	ARSECSE (Sevilla)	The Court acquitted one of the Club's members, as it was established that the plants confiscated from his property were for the use of the members of the Club. The judge referred to the 'shared consumption' jurisprudence.
2010	Court of First Instance and Instruction	GANJAZZ (Donosti)	The Court acquitted the 25 members of GANJAZZ involved in a cannabis plantation. The Court referred to the Club's by-laws, which indicated that all members would share the ownership of the plantation as well as the cannabis produced, thus not having a commercial purpose and therefore not constituting an offence against public health.

2.2.4. Official statements or discussions about the Cannabis Social Clubs in the context of international law

Current legislation, originally adopted in the late 1960s (Ley 17, 1967), was implemented with a view to introducing into the national legal framework the propositions of the 1961 Single Convention on Narcotic Drugs (Berastegi, 2005; Arana, 2005). According to a Spanish academic in the field of criminal law:

> "If we attend to the National Plan against Drugs, the government's official position in this area is, as in others, of strict alignment with the more traditional international approach […] and thus the conclusion is that Cannabis Social Clubs violate the provisions of the UN Conventions and other international instruments". (Professor in Criminal Law, interview)

The most recent declarations from the Anti-Drug Chief Prosecutor Jose Norena[42] noted the "alarming increase of cannabis plantations" in the country (Marihuana semillas weblog, 2013; own translation, Special Narcotics Prosecutor, 2013) a trend he classified as "very worrying" (own translation, Marihuana semillas weblog, 2013).[43] Norena furthermore declared that there is no legal loophole in the current framework, rejecting the idea that there is a need to improve the legislative instruments in the field (El Mundo, 2012; Special Narcotics Prosecutor, 2013).

2.2.5. Recent policy discussions

Several proposals addressing CSCs, and the cannabis legal framework more broadly, have been put forth in the past two decades in Spain, but these discussions and proposals have not resulted in a change of national policy or law. As far back as 1989, a group of academics, judges and prosecutors published a

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matter of national law and that it was for the national judges to review the compatibility of such practice with EU or international law (European Parliament, 2006).

[41] In the original source: "un grupo perfectamente identificado de consumidores, que se han asociado para eludir los riesgos del mercado illegal de cannabis" (Audiencia Provincial de Bizkaia, 2006).

[42] The Anti-Drug Chief Prosecutor coordinates public prosecution in the area of drug trafficking, narcotics and psychotropic substances, and drug-related money laundering, at the level of the High Court and the Central Magistrates' Court (Fiscalia General del Estado, 2009b).

[43] In the original sources, respectively: "el preocupante aumento de plantaciones de cannabis en nuestro país, y de Asociaciones constituidas con el fin de propiciar el cultivo o consumo colectivos" (Special Narcotics Prosecutor, 2013); "muy preocupante" (Marihuana semillas weblog, 2013).

Manifesto, proposing an alternative drugs regime, in recognition of what they perceived as "the failure of the repressive policy" (own translation, Grupo de Estudios de Política Criminal, 1989).[44] Since then various political parties have suggested different approaches to the drugs problem, both at the regional and national level. A recent example is a proposal from a coalition of left-wing parties to liberalise laws against cannabis production, consumption and distribution which was discussed in the Plenary Session of Congress in March of 2013. After discussion, this proposal was rejected (El Confidencial, 2013). Furthermore, those involved in the Cannabis Social Club movement have participated in several parliamentary discussions, describing the context and evolution of these associations in Spain and advocating an alternative legal framework which would more clearly regulate the establishment and functioning of the CSCs (Barriuso, 2010; Barriuso, 2010).

The debate around cannabis production has also proceeded at the regional level, particularly within the Autonomous Region of the Basque Country (Blickman, 2011; NORMLspain, 2013).[45] In December 2011, on the occasion of the presentation of the regional addictions plan, it was announced that upon agreement of all political parties,[46] the Basque Parliament would develop a bill to regulate "the cultivation, sale and consumption" of cannabis, and the activities of the Cannabis Social Clubs (Elorza, 2011; El Pais, 2011; Blickman, 2011). The sessions to discuss the bill began in 2012, with the contributions of twelve experts, and were resumed in 2013 (Elorza, 2013).

The question of whether a regional parliament would be competent enough to legislate such matters has been present in the discussions (Blickman, 2011). This question relates to the wider interaction between central government and autonomous communities, as explained in Section 2.2.1. The Autonomous Region of the Basque Country has previously legislated in the field of prevention, assistance to and reinsertion into society of drug addicts, covering both legal and illegal drugs (1988). In the words of criminal law professor J.-L. De La Cuesta,

> "The Basque Region's Statute of Autonomy (Organic Law 3/1979, 18 December) does not explicitly mention 'drug addictions' as a specific matter for which the autonomous region would have competence. Nevertheless, from a study of its exclusive competences in the field of Interior matters, social assistance, education, youth, minors, pharmaceutical regulation, community development among others, as well as its competence logistically to develop and execute basic (Spanish, central) legislation in matters of health, social security

[44] In the original source: "el fracaso que ha obtenido la acentuacion de la politica represiva" (Grupo de Estudios de Política Criminal, 1989).

[45] Other proposals have been discussed in other regions as well. For instance in 2012, in a village in Catalonia (Rasquera), the City Council proposed to introduce the production of cannabis by a public company in order to supply the Asociacion Barcelonesa Cannabica de Autoconsumo (ABCDA). This initiative was part of a wider 'anti-crisis' strategy which was approved by the local population in a referendum (56,3% of the population voted favourably) (Drug Law Reform, 2013; Ramos-Salvat, 2012; La Gaceta, 2012). However, the Court for Contentious-Administrative Proceedings of Tarragona has annulled the draft project (Garcia, 2013).

[46] The discussion was also encouraged by the Basque Ombudsman Inigo Lamarca, who had previously organised a workshop on the topic of "Cannabis: use, legal security and policies" (Defensoria del Pueblo del Pais Vasco (Ararteko), 2011; Elorza, 2012).

> etc. immediately sprung the conviction that it was necessary and convenient to organise at the level of the Basque Autonomous Community a certain institutional structure in matters of drug addiction". (Cuesta, 1991)

In contrast, the Anti-Drug Chief Prosecutor stated that the autonomous regions have no power to regulate the operations of Cannabis Social Clubs (El Mundo, 2012), an opinion reiterated by the Anti-Drug Prosecutor of the Basque Country (NORMLspain, 2013). Moreover, Francisco de Asis Babin, the Head of the Spanish National Plan Against Drugs, casts doubts on the possibility of regulating Cannabis Social Clubs and the competencies of the Basque government to undertake this operation (Diariovasco, 2012).

2.3. Belgium

2.3.1. Background on cannabis laws

Federation, Regions and Communities

Belgium is a federal state, consisting of the federation, communities and regions (Belgium.be, n.d.). The regions are: "the Flemish Region, the Brussels Capital Region and the Walloon Region" (Belgium.be, n.d.) and have competence over "territorial issues such as environment, spatial planning, housing, mobility, infrastructure, economy and employment" (Vlaanderen.be, n.d.). The communities, the Flemish, French and German-speaking communities, are based on languages and culture and have competences over "personal matters such as culture, education, welfare, health, sports and language" (Vlaanderen.be, n.d.). The criminal justice system ('*Justitie*', justice) remains under federal competence (Belgium.be, n.d.).

Federal Drug Note 2001

In 1997, a parliamentary working group made recommendations to the House of Representatives following several hearings regarding drug problems in the Belgian society (Belgische Kamer van Volksvertegenwoordigers en Senaat, 2001).[47] Although drug issues are mainly dealt with at the local level, the federal government published a Federal Drug Note (*Federale Drug Nota*) in 2001 in order to "provide an answer to the most pressing issues surrounding drug use and drug addictions in the society" (Belgische Kamer van Volksvertegenwoordigers en Senaat, 2001, p. 8). Therefore, the Federal Drug Note inventoried the state of implementation of the recommendations made by the parliamentary working group and translated unrealised recommendations into concrete policy measures (Belgische Kamer van Volksvertegenwoordigers en Senaat, 2001). The Note also looked at policy options within the context of

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[47] A legislative proposal was submitted in 2000 (and amended and re-submitted in 2003) regarding regulating cannabis production, distribution and sale. However, this was not taken forward and expired due to dissolution of the Chambers in 2007 (Belgische Kamer van Volksvertegenwoordigers, 2000; Belgische Kamer van Volksvertegenwoordigers, 2003; Reflex Databanken Raad van State, n.d.).

the 1988 UN Convention and the EU drug policy (Schengen), yet as this referred only to the use of cannabis it is not discussed here.[48]

Developments in cannabis laws

Currently, under Article 2bis of the Drug Law[49] and under Article 26bis of the Royal Decree of 31 December 1930, "import, manufacturing, transport, purchase, possession and cultivation of cannabis" is illegal.[50,51]

However, both the Belgian Drug Law of 1921 and the Royal Decree of 1930, of which the latter specifies the acts that are illegal under the Drug Law, have undergone several changes. Although "the cultivation of plants from which narcotic substances can be derived" was added to the Belgian Drug Law in 1958, cultivation was not punishable as it was not laid down in a Royal Decree, a so-called 'implementation decree' (*uitvoeringsbesluit*), as stated by the Antwerp Court of Appeal in 2000.[52] A decision by the Antwerp Court of Appeal in 2001 clarified that although cultivation of cannabis plants as such was not included in a Royal Decree, "through harvesting, however, the person concerned will then possess the substances, which is punishable".[53] Following the guidelines of the Federal Drug Memo of 2001, both the Belgian Drug Law and the Royal Decree were amended in 2003. The Drug Law now distinguished between cannabis and other illegal drugs. Furthermore, criminal intervention with regard to the drug user was seen as the *ultimum remedium* (alternative of last resort), thereby minimising this intervention for drug users, yet not for drug production and trade (Belgische Kamer van Volksvertegenwoordigers en Senaat, 2001). The Royal Decree now included a specific clause making cultivation of cannabis plants for personal use an offence and thus punishable. In 2006, the Supreme Court clarified that cultivation of cannabis *for others* is an offence under Article 26bis, 4° Royal Decree 31 December 1930 KB and 2bis Drug Law.[54]

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[48] The Federal Drug Note is "in accordance with the EU drug policy and respects the UN Drug Treaties" (Brice De Ruyver, 2011, p. 4). The debate in that period seems to revolve around the Drug Note and the proposed amendments of the Drug Law and joined guideline that followed. Within this debate, the international context was discussed. Yet, as this focused on whether tolerating or giving lowest prosecution priority to cultivation for personal use (thus small amounts) was allowed under international law, and as the Drug Law and joint guideline underwent several changes in the following years, this will not be discussed here (Belgische Kamer van Volksvertegenwoordigers, 2001; Belgische Kamer van Volksvertegenwoordigers, 2003).

[49] Wet betreffende het verhandelen van giftstoffen, slaapmiddelen en verdovende middelen, psychotrope stoffen, ontsmettingsstoffen en antiseptica en van de stoffen die kunnen gebruikt worden voor de illegale vervaardiging van verdovende middelen en psychotrope stoffen (24 February 1921). As of 22 November 2013: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=1921022401

[50] Koninklijk besluit houdende regeling van de slaapmiddelen en de verdovende middelen en betreffende risicobeperking en therapeutisch advies (31 December 1930 KB 31 December 2003). As of 22 November 2013: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1930123130&table_name=wet

[51] All acts relating to cannabis for medical purposes are not allowed under Belgian national law.

[52] Court of Appeal, Antwerp 17 November 2000; *Tijdschrift voor Strafrecht*, 2001, p. 344.

[53] *NJW* 2002, nr. 2, p. 62; Court of Appeal, Antwerp 31 May 2002.

[54] Supreme Court 10 January 2006, P.05.0812.N; *Nullum Crimen* 2006, p. 266.

Possession of small amounts of cannabis receives lowest prosecution priority in 2005

As described in the previous section, cannabis production or possession is not allowed by national law and is therefore considered a criminal offence for which a fine or prison sentence can be given (Federale Overheidsdienst Justitie, 2013). However, a 2005 joint guideline[55] issued by the Minister of Justice and the College of Public Prosecutors, which followed the Federal Drug Note from 2001, sets out that the lowest prosecution priority is to be given to the possession of cannabis. This refers to possession by adults of amount suitable for personal use, which is to say quantities not exceeding three grams or one cultivated cannabis plant and without aggravating circumstances or causing disturbance of the public order.[56] According to this guideline, only a 'simplified' police record (*vereenvoudigd proces-verbaal,* VPV) can be drawn up in which the facts are noted; the person concerned will not receive a criminal record.[57] Furthermore, registration in a VPV will not lead to confiscation of the cannabis products.[58] However, in case of aggravating circumstances[59] or disturbance of the public order[60] a normal police report will be drawn up.

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[55] The Belgian Public Prosecution Service enjoys ample margins of discretion regarding investigation and prosecution. Under Article 143quater Judicial Code (*Gerechtelijk Wetboek*) the Minister of Justice "determines the guidelines on criminal policy, including those on investigative and prosecution policy, upon advice of the college of prosecutors-general. These guidelines are binding for all members of the public prosecution service. The prosecutors-general of the Courts of Appeal are responsible for the execution of these guidelines within their jurisdiction". As of 22 November 2013:

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1967101002&table_name=wet

[56] Gemeenschappelijke richtlijn van de Minister van Justitie en het College van procureurs-generaal omtrent de vaststelling, registratie en vervolging van inbreuken inzake het bezit van cannabis (25 Januari 2005) (Joint guideline of the Minister of Justice and the College of General Prosecutors on the registration and prosecution of cannabis possession offences). As of 22 November 2013: http://www.ejustice.just.fgov.be/cgi/api2.pl?lg=nl&pd=2005-01-31&numac=2005009061

[57] As set out in the 2005 circular letter of the college of prosecutors-general, a VPV registers "the main tangible elements of relatively minor infringements" (Openbaar Ministerie, 2011, p. 19). In principle, VPVs are not submitted to the Crown prosecutor (*procureur des Konings*). This VPV is a tool aimed to reduce the workload for both police and prosecutors (Openbaar Ministerie, 2011).

[58] As laid down under Section D(6) of the 2005 joint guideline, when registration takes place in the form of a VPV, this will not lead to confiscation of the substances. However, if the person voluntarily cedes the substances, these will be destroyed by the police:"De inbreuken die, in het kader van onderhavige richtlijn, geregistreerd worden in een VPV, geven geen aanleiding tot een inbeslagname van de aangetroffen verdovende middelen. Deze mogen derhalve in het bezit blijven van de betrokkene. Indien deze laatste er vrijwillig afstand van doet, worden deze stoffen onverwijld vernietigd door de hiertoe aangeduide verantwoordelijke van het betreffende politiekorps" (Gemeenschappelijke richtlijn van de Minister van Justitie en het College van procureurs-generaal omtrent de vaststelling, registratie en vervolging van inbreuken inzake het bezit van cannabis (25 Januari 2005). As of 22 November 2013: http://www.ejustice.just.fgov.be/cgi/api2.pl?lg=nl&pd=2005-01-31&numac=2005009061

[59] Aggravating circumstances are defined under Article 2bis of the Drug Law: committed in presence of a minor; committed in the activity of an organisation; causing harm to or resulting in death of another individual.

[60] Circumstances that disturb the public order are defined under the 2005 joint guideline: possession of cannabis in prison or youth protection institute; possession of cannabis in an educational institute or in its immediate vicinity; the pointedly possession of cannabis in a public place or place that is accessible for the public.

2.3.2. Development of the Cannabis Social Club model[61]

The Belgian Cannabis Social Club (CSC) 'Trekt Uw Plant' ('Pull Your Plant') is a non-profit organisation (*Vereniging Zonder Winstoogmerk*) initiated in 2006, following the 2005 joint guideline in which lowest prosecution priority is given to the possession of up to three grams of cannabis or one cultivated cannabis plant. The purpose of Trekt Uw Plant is to demonstrate the possibilities of regulating cannabis production for personal use by adults in Belgium (Trekt Uw Plant, 2013). The organisation provides its members the opportunity to produce cannabis collectively, one plant per person, in closed spaces not accessible to the public in Antwerp, Luik, Brussels and Hasselt (Trekt Uw Plant, 2006; Enzo van Steenbergen, 2013). Furthermore, Trekt Uw Plant conducts research into cannabis production methods which would minimise public health risks, and informs its members about these research findings (Trekt Uw Plant, 2006). The Club believes that through this initiative they consistently apply the 2005 joint guideline. In addition, the Club aims to shift the focus from criminal law to the public health element of cannabis use (Trekt Uw Plant, 2013).

After two court cases, as described below, Trekt Uw Plant first cultivated and harvested cannabis for its members in 2010 (Trekt Uw Plant, 2013). Each member pays a contribution for the costs incurred for raising the plants and every two or three months a so-called 'exchange fair' takes place in a private space, where members receive the harvest of their own cannabis plant (Trekt Uw Plant, 2013). In August 2013 Trekt Uw Plant consisted of 304 members, with departments in several cities and a medicinal division (Trekt Uw Plant, 2013). Eligibility for membership in Trekt Uw Plant is restricted to adults who live in Belgium, are cannabis users, are informed about the Belgian Drug Law regarding cannabis, support the organisation's aims, and endorse its statutes and decisions (Trekt Uw Plant, 2006; Plant, n.d.), and membership is open to both non-medical and medical cannabis users (Verbond voor Opheffing van het Cannabisverbod, 2010). The organisation is based on a not-for-profit principle and is financially supported through donations, loans, membership contributions, legacies and other awards (Trekt Uw Plant, 2006).

2.3.3. Legal status

Trekt Uw Plant's first court ruling 2006–2008

In December 2006, Trekt Uw Plant held a demonstration in Antwerp in which members of the club each "cropped a cutting of one female cannabis plant and placed that cutting in a peat pot".[62] After this manifestation, police confiscated the female cannabis plant and cuttings from the organisation's premises

[61] There have been three new CSCs established in Belgium recently: the Mambo Social Club (since April 2013) in Hasselt, Ma Weed Perso (exact date unknown) in Luik and Weed' Out in Andenne (exact date unknown). More information available at: http://www.social-cannabis-clubs.com/belgie-belgique/ and http://www.weedout.be/csc/ (Both as of 22 November 2013). As Trekt Uw Plant has been operating since 2006 and has been the only CSC in Belgium involved in court cases or official discussions to date, it was decided to limit the research for this case study to this particular club.

[62] Correctionele Rechtbank, Antwerpen, 25 April 2007, 2523.

and, subsequently, the prosecution charged participants with possession of cannabis with the aggravating circumstance of participation in a criminal organisation, as stated in the Belgian Drug Law.[63]

In response to this prosecution, the Minister of Justice was asked in the House of Representatives to clarify its actions with respect to the 2005 joint guideline (*Belgische Kamer van Volksvertegenwoordigers*). As the Trekt Uw Plant case was still pending in court, she could not formally discuss the matter, yet did emphasise that cannabis possession is illegal under Belgian law and that there was no intention to change this (Belgische Kamer van Volksvertegenwoordigers, 2007).

During the court case, in response to the defendants' argument that it was unclear for the Belgian public whether possession of a cannabis plant for personal use was illegal, the court clarified that the joint guideline from 2005 did not replace the existing law.[64] Moreover, in the amended Royal Decree from 2003, cultivation of cannabis plants is criminalised. Hence, possession of a cannabis plant for personal use remained illegal under Belgian law. Yet, it ruled that the organisation was not a criminal organisation within the meaning of the drug law as it did not have the intention to commit drug trafficking in an organised way.[65] However, the court emphasised that the law enforcement officers still had discretion in whether they would draw up a simplified police report, as stated in the 2005 joint guideline, or a report according to the Drug Law. In its decision, the Local Court (*correctionele rechtbank*) condemned the defendants for cannabis possession, thereby, *inter alia*, referring to Article 2bis of the Drug Law and Article 26bis of the Royal Decree that prohibits cannabis cultivation. However, the court ruled that there was no ground for dissolving Trekt Uw Plant since it was not a criminal organisation, as it was not demonstrated that Trekt Uw Plant, its members or founders had the intention to trade in illegal substances in an organised way.[66] In 2008 the Court of Appeal ruled that, in case the facts (cannabis possession and/or cultivation) would be proven, it would be considered as acts for personal use, classified as a misdemeanour (*overtreding*, minor offence) for which a fine of between 15 and 25 euros could be imposed.[67] These rulings clarified the law in general; however, as more than a year had then elapsed since the original offences were committed, the criminal prosecution had become time-barred and the Court of Appeal could not pronounce itself.[68]

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[63] Article 2bis of the Drug Law speaks of 'organisation' instead of 'criminal organisation', however, in the meaning of the law 'organisation' refers to the intention to illegally commit drug trafficking in an organised way (Correctionele Rechtbank, Antwerpen, 25 April 2007, 2523). However, for simplification purposes, we will refer to 'criminal organisation' in this section.

[64] Correctionele Rechtbank, Antwerpen, 25 April 2007, 2523.

[65] Correctionele Rechtbank, Antwerpen, 25 April 2007, 2523.

[66] Correctionele Rechtbank, Antwerpen, 25 April 2007, 2523.

[67] Hof van Beroep, Antwerpen, 26 June 2008, 1196.

[68] Hof van Beroep, Antwerpen, 26 June 2008, 1196.

Trekt Uw Plant's second court ruling 2008–2010

The second court case focused on two public protest demonstrations of Trekt Uw Plant in 2008 for which the organisation was accused of encouraging drug use.[69,70] Prior to one of the demonstrations, the Minister of Justice stated that although cannabis possession for personal use receives the lowest prosecution priority, it remains illegal and so conforms to the international treaties (Belgische Kamer van Volksvertegenwoordigers, 2008a). Furthermore, the government's position on this issue was reaffirmed during a House of Representatives meeting when the Minister of Justice emphasised, in response to the Trekt Uw Plant manifestations, that cannabis possession and production are illegal under Belgian law and that there was no intention to change that (Belgische Kamer van Volksvertegenwoordigers, 2008b). Details as noted in the court ruling reveal that the CSC wanted to 'test' the Belgian law through these demonstrations and that it disagreed with Belgian drug legislation as it tolerates possession of cannabis while prohibiting cannabis purchase and production. In addition, during these manifestations members of the club planted cannabis seeds and distributed leaflets. In 2010, the Court of Appeal acquitted the defendants as they, although their acts were provocative, did not encourage drug use.[71]

Legal status 2010–2013

The net result of these cases is that while cannabis production is not allowed by Belgian law, Trekt Uw Plant and the three recently established Cannabis Social Clubs, Mambo Social Club, Ma Weed Perso and Weed' Out, have in fact (as verified by a respondent) been growing cannabis without law enforcement interference since 2010. However, during a meeting in the House of Representatives the Secretary of State from the Ministry of Justice stated that, although no plantation of the club was found to date, the acts of Trekt Uw Plant fall beyond the scope of the 2005 joint guideline as the club possesses cannabis for others (Belgische Kamer van Volksvertegenwoordigers, 2011). Moreover, he argued that the club infringes the Drug Law by facilitating drug use of others (Belgische Kamer van Volksvertegenwoordigers, 2011). A different view is expressed by Joep Oomen, founder of Trekt Uw Plant, as he argues that the Belgian government more or less tolerates the club, even though this has not been legally defined to date (Enzo van Steenbergen, 2013).

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[69] Hof van Beroep, Antwerpen, 25 February 2010, C/341/2010.

[70] Under Article 3 Drug Law it is stated that the sanctions as listed under Article 2bis apply. Article 2bis lists, *inter alia*, the following sanctions: imprisonment of three months to five years and a fine of 1,000 to 100,000 euros; imprisonment of five to ten years and the option of a fine when, *inter alia*, committed in front of a minor person older than 16; if it is the activity of an organisation, the Drugs Law instructs the imprisonment of ten to fifteen years and a fine of 1000 to 100,000 euros and imprisonment of fifteen to twenty years when leading the organisation Note that a surcharge principle applies for fines, called '*opdeciemen'*, as stated under Article 12 Drug Law. Note that all specific details of the sanctions are not listed here and the list is therefore not exhaustive. Please see for a complete overview of the specific circumstances and sanctions Article 2bis Drug Law, as of 22 November 2013: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=1921022401

[71] Hof van Beroep, Antwerpen, 25 February 2010, C/341/2010.

2.3.4. Official statements or discussions about the Cannabis Social Clubs in the context of international law

We did not identify any official statements, from either the government or the INCB, about whether or how the Cannabis Social Clubs fit within the existing international drug conventions.

2.3.5. Recent policy discussions

A Belgian toxicologist, Jan Tytgat from the KU Leuven, recently drew national media attention when he stated it was worth considering a pilot project in which the government itself should produce and sell cannabis.[72] His main argument cited the increase in THC potency witnessed in Belgium over the years and the lack of quality controls for illegal drugs.[73] The Minister of Social Affairs and Public Health acknowledged that the Belgian cannabis policy had failed and would not rule out a pilot initiative as suggested by Tytgat, but said this should first be considered with experts (De Ley, 2013; Vandaag.be, 2013). During a plenary meeting of the Belgian Senate on 2 May 2013 the Minister clarified her statement regarding the failed Belgian cannabis policy and indicated that the possibilities of a pilot project should be examined in the legal, health and crime context. As a result, an expert working group will be established to evaluate current drug policy and possibilities of state-regulated cannabis production (Belgische Senaat, 2013).[74] Additionally, in July 2013, a Member of Parliament asked the Minister of Justice for her opinion regarding the statements made by the Minister of Social Affairs and Public Health (Belgische Senaat, 2013). The Minister of Justice indicated in a response that the issue has not been formally discussed and that to date the government's position regarding cannabis policy remains unchanged. In addition, she stated that it would be good to cover issues surrounding the potential change of the Belgian drug policy at the Interministeriële Conferentie Drugs[75] and the Algemene Cel Drugs (the Inter-Ministerial Drugs Conference and the General Drugs Cell),[76] where, *inter alia*, the Belgian drug

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[72] On Monday 18 November 2013, criminologist Tom Decorte, toxicologist Jan Tytgat and economist Paul De Graauwe presented a manifest in which they called for: "(1) a critical evaluation of the results and unintended consequences of the Belgian cannabis policy; (2) the termination of the criminalisation and stigmatisation of people who use cannabis and not cause harm to others; (3) the reduction of the repressive approach, and the utilisation of budgetary resources following this reduction for a set of measures that discourage demand; (4) to seriously study the policy options for a regulated cannabis market and; (5) the experimentation of models for legal regulation cannabis" (Decorte et al., 2013, pp. 3–4).

[73] In 2012 Trekt Uw Plant had suggested creation of a 'city garden' (*stadstuin*) which would involve a cannabis plantation for members of the organisation, under supervision of the government (De Ley, 2013), but politicians argued that they would not support such an initiative as it would violate Belgian law (Calliauw, 2012).

[74] Based on this research, the working group has not been established to date.

[75] At least once a year, ministers from the federal government, regions and communities gather at the Interministeriële Conferentie Drugs to discuss and align the Belgian drug policy. More information available at, as of 22 November 2013:

http://health.belgium.be/eportal/Healthcare/Consultativebodies/Interministerialconferences/Drugs/18036771#.UnvfIV9FDIU

[76] The Algemene Cel Drugs consists of representatives from the both federal government and the regions, a coordinator and an adjunct-coordinator. The Algemene Cel Drugs, for example, prepares reports and proposals for

policy is being discussed on a regular basis. However, the government has not decided yet if it will participate in this discussion and therefore has no main arguments regarding this topic to date (Belgische Senaat, 2013).

2.4. United States of America

2.4.1. Background on cannabis laws

Federal cannabis policies and practices

The federal Controlled Substances Act (CSA) distinguishes drugs for which there is no approved medical use from those which have a recognised use as medicines.[77] The latter category is further subdivided into four schedules based on the substances' potential to induce dependence. Substances with medical application but high potential for dependence (e.g., cocaine) are in 'Schedule II' and can only be prescribed under tightly controlled circumstances. Substances with successively lower dependence liabilities are placed in lower schedules (Schedules III–IV) and are available via prescription under less stringent terms (e.g., prescriptions do not need to be renewed as often). All substances for which there is no recognised medical application are grouped together in Schedule I, regardless of their dependence liability, because there is no need to make distinctions about the circumstances under which they can be used: all use is banned.[78]

As summarised by Caulkins et al. (2012), five conditions must be met for the federal government to accept a drug as medicine:

1) "The drug's chemistry must be known and reproducible
2) There must be adequate safety studies
3) There must be adequate and well-controlled studies proving efficacy
4) The drug must be accepted by qualified experts
5) The scientific evidence must be widely available."

In general, it is a process that respects the norms of traditional scientific medicine. It is a process geared more towards defined and well-controlled doses of a specific chemical, not to herbal formulations that

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the Interministeriële Conferentie Drugs. The Interministeriële Conferentie Drugs decides on the proposals as brought forward by the Algemene Cel Drugs. More information available at, as of 22 November 2013: http://health.belgium.be/eportal/Myhealth/Healthylife/drugs/18036801?ie2Term=Cellule?&ie2section=&fodnlang=nl#.Unvd_V9FDIU

[77] Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970.

[78] Confusingly, the language describing eligibility for Schedule III makes reference to having lower abuse liability than substances in either Schedule II or Schedule I, whereas logically that comparison should only be with substances in Schedule II. This inconsistency arises frequently in discussions of U.S. cannabis policy, with reform advocates arguing that cannabis should be rescheduled because it has lower abuse liability than other substances in Schedule I, while obscuring the core logic: all substances that lack recognised medical application go in Schedule I.

contain many different active compounds in amounts and proportions that vary from sample to sample.[79] It also respects the norms of evidence-based medicine, such as double-blind randomised controlled trials, more than testimonials and case studies.

While lawsuits have been filed to remove cannabis from Schedule I, none have been successful. There is little reason to expect this to change in the near future. The U.S. Supreme Court recently refused to hear a challenge to a January 2013 finding made by the District of Colombia Court of Appeals that the U.S. Drug Enforcement Administration's (DEA) decision not to reschedule cannabis was not "arbitrary and capricious."[80]

Despite the federal prohibition on using cannabis for medical purposes, twenty-one states and the District of Colombia now provide exceptions to their state-level prohibitions for use and in some cases production and sale of cannabis when the user obtains a recommendation that such consumption may be medically useful (NORML, 2013; Pacula et al., 2013). There is tremendous variation in these state laws with respect to the conditions for which medical cannabis can be used, how patients obtain permission to use and how it can be supplied (Pacula et al., 2003; 2013).

The early medical marijuana laws were the product of 'initiatives', exercises in direct democracy through which the voters themselves vote a law into existence, rather than going through their elected representatives. Twenty-six U.S. states' constitutions allow for voter initiatives and referenda or, more generally, propositions. Details vary by state, but as a general rule, the proposition process is more common in the Western U.S. and often elected assemblies lack the authority to reverse or amend initiatives passed by the voters.

Some of the more recent medical cannabis laws, particularly on the East coast, have been created through the familiar process of conventional state legislation.

The current situation raises the question of what happens when state and federal laws conflict. That is naturally an enormously important and complicated subject in U.S. constitutional law, but as a very broad generalisation, the federal government retains the right to enforce its laws regardless of whether the state does or does not have parallel laws, but the state laws are not nullified unless they "positively

[79] The U.S. Food and Drug Administration (FDA) regulates herbal supplements very differently from prescription drugs. The FDA monitors the safety of herbal supplements that are on the market (defined as dietary supplements), but manufactures do not need FDA approval to put them on the market. As of 22 November 2013: http://nccam.nih.gov/health/supplements

[80] "On the merits, the question before the court is not whether marijuana could have some medical benefits. Rather, the limited question that we address is whether the DEA's decision declining to initiate proceedings to reschedule marijuana under the CSA was arbitrary and capricious. These questions are not coterminous. "The scope of review under the 'arbitrary and capricious' standard is narrow and a court is not to substitute its judgment for that of the agency." Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co ., 463 U.S. 29, 43 (1983). On the record before us, we hold that the DEA's denial of the rescheduling petition survives review under the deferential arbitrary and capricious standard. Available from, as of 13 November 2013: http://www.cadc.uscourts.gov/internet/opinions.nsf/12CBD2B55C34FBF585257AFB00554299/$file/11-1265-1416392.pdf

conflict" with the federal law, a condition which the courts customarily construe narrowly to avoid gutting state sovereignty.[81]

In the context of cannabis law, these 'federalism' questions have been raised and addressed with reasonable clarity. While First Amendment protections of free speech preclude the federal government from prohibiting the writing of medical cannabis recommendations, in 2005 the U.S. Supreme Court ruled in *Gonzales v. Raich* that the federal government could prohibit cannabis production even in states that approve its use for medicinal purposes. The rationale was that the U.S. Constitution (Article I, Section 8, Clause 3) grants the federal government broad powers to regulate activities that affect interstate commerce.[82]

Given that the federal government simply lacks the enforcement resources that would be necessary to enforce its cannabis laws in all instances, the U.S. Department of Justice (DOJ) released a series of memoranda to U.S. Attorneys providing guidance as to which cannabis-related activities were or were not of sufficient importance to merit allocation of scarce federal enforcement resources. In October 2009 Deputy Attorney General David Ogden issued a memorandum (the Ogden Memo) distinguishing between individuals and caregivers on the one hand, and commercial enterprises on the other:[83]

> "As a general matter, pursuit of these priorities should not focus federal resources in your states on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana. For example, prosecution of individuals with cancer or other serious illnesses who use marijuana as part of a recommended treatment regimen consistent with applicable state law, or those caregivers in clear and unambiguous compliance with existing state law who provide such individuals with marijuana, is unlikely to be an efficient use of limited federal resources. On the other hand, prosecution of commercial enterprises that unlawfully market and sell marijuana for profit continues to be an enforcement priority of the Department."

Some interpreted this as a 'green light' from the federal government, and the number of medical cannabis storefronts increased in Colorado, Washington, and elsewhere; however, federal raids still occurred. In 2011, the DOJ released another memorandum (referred to as the 'Cole Memo') clarifying the previous statement:

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[81] The key passage is Article VI, Clause 2: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding."

[82] The Court relies heavily on *Wickard v. Filburn*, 317 U.S. 111, 128—129 (1942). "*Wickard* thus establishes that Congress can regulate purely intrastate activity that is not itself "commercial," in that it is not produced for sale, if it concludes that failure to regulate that class of activity would undercut the regulation of the interstate market in that commodity. The similarities between this case and *Wickard* are striking. Like the farmer in *Wickard*, respondents are cultivating, for home consumption, a fungible commodity for which there is an established, albeit illegal, interstate market."

[83] Available from, as of 22 November 2013: http://www.justice.gov/opa/documents/medical-marijuana.pdf

> "The Odgen Memorandum was never intended to shield such activities from federal enforcement action and prosecution, even where those activities purport to comply with state law. Persons who are in the business of cultivating, selling, or distributing marijuana, and those who knowingly facilitate such activities, are in violation of the Controlled Substances Act, regardless of state law. Consistent with the resource constraints and the discretion you may exercise in your district, such persons are subject to federal enforcement action, including potential prosecution. State laws or local ordinances are not a defense to civil enforcement of federal law with respect to such conduct, including enforcement of the CSA. Those who engage in transactions involving the proceeds of such activity may also be in violation of federal money laundering statutes and other federal financing laws."

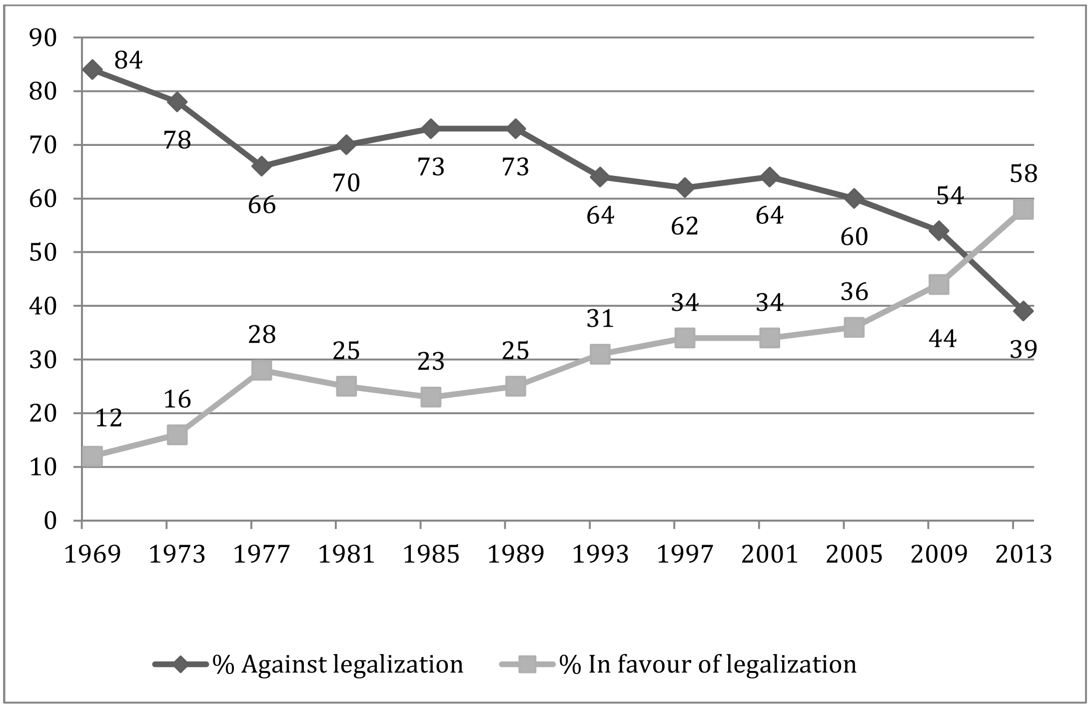
Increased support for recreational cannabis

While medical marijuana continued to become more popular with voters, so did the idea of making marijuana legal for non-medical purposes. Figure 2.2 displays the results of a Gallup Poll question "Do you think marijuana should be legal, or not?" which has been asked on a semi-regular basis since 1969. In just 15 years, support for legalising marijuana use roughly doubled from 25% in 1995 to 50% in 2011. The results from the October 2013 survey suggest that 58% of the country thinks marijuana use should be legal, although some have called that result into question.[84,85]

[84] As of 22 November 2013: http://www.theguardian.com/commentisfree/2013/oct/23/marijuana-legalization-majority-support

[85] From October 2010 to November 2013, Gallup shows a 26% increase in support for legalisation. During that roughly same period (March 2010 to March 2013), a similar Pew survey showed a 27% increase. (Note: The Pew Survey started in 2010) As of 22 November 2013: http://www.people-press.org/files/legacy-questionnaires/Marijuana%20topline%20for%20release.pdf

Figure 2.2. Americans' views on legalising cannabis for recreational use



Source: http://www.gallup.com/poll/165539/first-time-americans-favor-legalizing-marijuana.aspx

Conversations about legalising cannabis for non-medical purposes in the United States became serious in 2009 when legislation was introduced in the California State Assembly. While those bills did not advance very far through the legislative process, a proposition (California Proposition 19) garnered enough signatures to make it on the California ballot in 2010. This was not the first time cannabis legalisation was on a state ballot (see e.g., Caulkins et al., 2012b), but none of the previous attempts attracted as much national and international attention. While California's Proposition 19 failed after receiving 46.5% support in the November 2010 election, the margin was narrow, and that near miss served to energise reformers in California and in other states.

2.4.2. Development of the commercial industry for non-medial cannabis in Colorado and Washington State

Legalisation of large-scale commercial production and distribution of cannabis was on the ballot in three states in 2012: Colorado, Oregon and Washington State. The two initiatives that passed, in Colorado and Washington, were broadly similar, providing for private businesses to operate at three distinct market levels: growing, production/processing and retail sale (as well as testing).

That does not imply that other state-level legalisation proposals would necessarily follow that model. The 2012 Oregon initiative which was rejected but still garnered 46% of the vote, would have implemented a quite different system, with private commercial production but retail sale through a 'state store' monopoly, not altogether different from the state alcohol store system that exists in some U.S. states. The Oregon proposition was also quite 'industry-friendly' in a variety of dimensions. For example, regulatory

oversight would have rested with a newly created Oregon Cannabis Commission, five of whose seven members would have been selected by growers (thus building in regulatory capture).

The initiatives in Colorado and Washington both allow adults aged 21 and older to possess up to one ounce, but the major change pertained to cannabis businesses. The initiatives tasked state agencies with developing regimes to license and regulate for-profit cannabis firms (in Colorado it is the Department of Revenue and in Washington it is the State Liquor Control Board). It appears that licensed production and retail marijuana stores will open in Colorado in January 2014 and a few months later in Washington.

Table 2.2 presents information about the policies and regulations related to producing, distributing and selling cannabis in these states as of October 2013. It also includes additional data for context. Some of the final regulatory decisions are still to be determined.

Table 2.2. Cannabis production, distribution, and retail rules in Colorado and Washington

	Colorado	Washington
Population	5.2 million	6.9 million
Percentage of past-month cannabis users in 2010–2011(combined medical and recreational users; unable to separate)	11%	9.9%
Already had medical marijuana market with retail stores	Yes	Yes
Home production allowed	Up to 6 plants per adult 21 and older (only 3 can be flowering at the same time)	No
Adults allowed to give away up to one ounce of cannabis to another adult	Yes	No
Local jurisdictions can choose not to allow cannabis retail	Yes	No
Taxes	15% state wholesale excise tax & 10% retail sales tax, plus a variety of local taxes.	25% at producer level; 25% at processor level, 25% at retail level; plus sales taxes.
Number of retail stores	TBD (will depend on state and local policies)	Initially up to 334
Indoor commercial production allowed	Yes	Yes
Outdoor commercial production allowed	Yes	Yes
Aggregate production limits	TBD	2 million square feet (1 million for bud, 1 million for concentrates)
Firm-level production limits	TBD	30,000 square feet under cultivation (about 2,790m^2)

Notes: TBD=To be determined. Sources: www.census.gov, http://lcb.wa.gov/marijuana/I-502, http://www.colorado.gov/cs/Satellite/Rev-MMJ/CBON/1251592984795, Pardo, 2013

2.4.3. Legal status

In August 2013, the U.S. Department of Justice issued a memorandum to federal prosecutors that laid out eight enforcement priorities for prosecuting marijuana cases:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorised marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property."

The essential idea is that a business that follows state law and regulations, and which does not thwart any of these federal priorities, would not likely be prosecuted by the federal government, regardless of its size or profitability, so long as this policy remained in place.[86] (Prosecutorial priorities can be adjusted by the administration at will; they do not require legislative action.) In the federal hearings which followed the release of the memorandum, U.S. Deputy Attorney General Cole reiterated that the administration would closely follow what was happening in these states using a 'trust but verify' approach.[87] But it is important to note that federal policy on cannabis could change across and within presidential administrations. Indeed, U.S. Attorneys have latitude to depart from guidance provided by the Justice Department. For instance, there have been far more cannabis dispensaries in Western than Eastern Washington. This could

[86] From the Cole (2013) memorandum: "In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above. Indeed, a robust system may affirmatively address those priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity. If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms.' As of 22 November 2013: www.justice.gov/iso/opa/resources/3052013829132756857467.pdf

[87]As of 22 November 2013:

http://www.judiciary.senate.gov/hearings/hearing.cfm?id=094c28995d1f5bc4fe11d832f90218f9

stem from various factors, but differing attitudes of the U.S. Attorneys for the Western and Eastern halves of the state are generally acknowledged to be important drivers of this difference.

2.4.4. Official statements or discussions about commercial cannabis in the context of international law

In March 2013, INCB President Yans referred to the Colorado and Washington initiatives and claimed that "allowing for the recreational use of cannabis would be a violation of international law, namely the United Nations Single Convention on Narcotic Drugs of 1961, to which the United States is Party", that "the United States has a treaty obligation to ensure the implementation of the treaties on the entirety of its territory" and hoped "that this issue would soon be dealt with by the US Government in line with the international drug control treaties.'[88]

As of November 2013, the Obama Administration has not made an official statement about how the initiatives or the federal response fit or do not fit within the existing international conventions. About four months after the initiatives passed, Attorney General (AG) Holder was asked at the National Association of Attorneys General annual conference about the federal response. He said:

> "You will hear soon. We're in the last stages of that review and we're trying to make a determination as to what the policy ramifications are going to be, what our international obligations are – there are a whole variety of things that go into this determination – but the people of [Colorado] and Washington deserve an answer and you will have one soon."[89]

When AG Holder made the announcement in August 2013, there was no mention about the international obligations. Similarly, when Deputy AG Cole testified before the Senate Judiciary Committee about the federal approach on 10 September 2013, he did not mention the international conventions; he was also not asked about them.

But there was some discussion about the international treaties at the hearing. The leading opposition party member on the Committee, Senator Grassley, referred to the conventions more than once in his opening remarks. First, he stated:

> "Marijuana isn't only illegal under laws passed by Congress, it's illegal under international law as well. The United States and 180 nations have signed the Single Convention on Narcotics Drugs. This treaty requires the United States to limit the distribution and use of certain drugs including marijuana for exclusively scientific and medical use. It's something this country gave its word to do and it's a commitment that our country and many others have benefited from through improved public health. Yet in 2012 Colorado and Washington decided to be the first jurisdictions in the world to legalize the cultivation,

[88]As of 22 November 2013: http://www.incb.org/documents/Publications/PressRelease/PR2013/press_release140313.pdf

[89] As of 22 November 2013: http://thehill.com/homenews/administration/284943-holder-promises-marijuana-verdict-qsoonq

> trafficking, and sale of recreational use of marijuana. These laws flatly contradict our federal law. Moreover, these laws have nothing to do with the controversy about whether marijuana has an appropriate medical use.

While Senator Grassley argued these laws contradict federal law, in this passage he did not explicitly argue that these state laws violate the international law. Indeed, he later argued that "they *may* be a violation of our treaty obligations" (emphasis added):

> "And the response of the Department of Justice isn't to sue to strike down the laws or prosecute illegal drug traffickers, but just let these states do it. These policies do not seem to be compatible with the responsibility of our Justice Department to faithfully discharge their duties and they may be a violation of our treaty obligations. Prosecutorial discretion is one thing, but giving the green light to an entire industry predicated on breaking federal law is quite another."

Other statements or discussions by academics/opinion leaders about these policy changes in the context of international law

The INCB position was also taken in a letter signed by a number of former directors of the U.S. Drug Enforcement Administration and the White House Office of National Drug Control Policy submitted a letter to AG Holder which argued:

> "Keeping marijuana illegal is a treaty obligation under the 1961 International Convention on Narcotic Drugs and supported by the two other Conventions: the 1971 Convention on Psychotropic Drugs and the 1988 Anti-Trafficking Convention. The United States was a prime mover of these multilateral treaties and largely responsible for signature ratification by virtually every other country in the world. The President of the International Narcotics Control Board (INCB) has already protested the initiatives in Colorado and Washington."

Some individuals who signed this letter have made other public statements. For example, Dr Bob DuPont (2013) asserts flatly that the initiatives violate international treaty obligations, and that in other policy domains the Obama Administration has been forceful in asserting federal supremacy over states' rights. Likewise, one of the experts invited to testify at the federal hearing. Dr Kevin Sabet, director of the anti-legalisation Smart Alternatives to Marijuana (SAM) who worked at ONDCP in the Clinton, Bush and Obama Administrations, testified:

> "By giving Washington and Colorado the go-ahead to start a massive for-profit, commercial industry for marijuana, the United States will violate its treaty obligations under the United Nations Single Convention on Narcotic Drugs of 1961 and its supplementary treaties, the 1971 Convention on Psychotropic Substances and the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances."[90]

[90] As of 22 November 2013: http://www.judiciary.senate.gov/pdf/9-10-13SabetTestimony.pdf

But there is not universal agreement on this point. Dr Keith Humphreys, a Stanford Professor and former ONDCP advisor in the Obama Administration, presents a different perspective:[91]

> "Constitutionally, U.S. states are simply not required to make marijuana illegal as it is in federal law. Hence, the U.S. made no such commitment on behalf of the 50 states in signing the UN drug control treaties.
>
> Some UN officials believe that the spirit of the international treaties requires the U.S. federal government to attempt to override state-level marijuana legalization. But in terms of the letter of the treaties, Attorney General Holder's refusal to challenge Washington and Colorado's marijuana policies is within bounds."

Yet another argument is that although the Constitution's Supremacy Clause might ensure that treaty obligations would trump state laws if there were a court case, that may be moot unless and until there is someone with legal 'standing' to bring such a case – meaning that someone can argue they have been injured by the state laws.

2.4.5. Recent/proposed changes in cannabis production polices and/or practices

Cannabis remains illegal under federal law, and it is possible that the federal approach to marijuana could change during the next Administration. Indeed, federal policy could change within the current Administration, but this does not seem likely unless Colorado or Washington, or their neighbours, experience significant problems (e.g., massive exports to other states) or media depictions change (as might happen, for example, were a youth in another state to need emergency department care as a result of eating marijuana-infused chocolates that were produced by companies in Colorado or Washington).

Other states are expected to put cannabis legalisation on their ballots as early as 2014 (e.g., Alaska, Oregon and possibly California), but as of November 2013 none of these proposals have secured a place on the ballot. Whether these or other states follow Colorado and Washington and allow for-profit firms to produce, distribute and sell cannabis, or do something different, remains to be seen. But given present trends and the current federal policy, we would not be surprised if additional states legalised large-scale production in 2014 and 2016.

2.5. Uruguay

2.5.1. Background on cannabis policy

Under Uruguayan law, consumption and possession "of a reasonable amount of drugs" for personal use is not penalised (Drug Law Reform, 2013; Ley 14.294, 1974; Ley 17.016, 1998). Since 2010 the possibility of legalising the cultivation of cannabis for personal consumption has been on the political agenda, as several pro-cannabis organisations expressed their discontent about the existing law. In this context, a

[91] As of 22 November 2013: http://www.huffingtonpost.com/keith-humphreys/can-the-united-nations-bl_b_3977683.html

Commission on Addiction was appointed by the Uruguayan government to investigate potential law reform. Subsequently, several bills were drafted by politicians from both conservative and socialist parties which addressed the legalisation of cannabis cultivation for personal use (Drug Law Reform, 2013). With the exception of the National Party Congressman Lacalle Pou, different parties agreed on submitting one single bill in May 2011. That bill proposed allowing cultivation of up to eight cannabis plants for personal use as well allowing for Cannabis Social Clubs (Drug Law Reform, 2013).[92]

Debate in 2012

In June 2012, President Mujica's administration announced its plan to submit a bill to legalise and regulate the cannabis market (Organization of American States, 2013a), and bill was submitted in that August. The stated rationale for the bill was to enhance public safety and public health (Drug Law Reform, 2013; Presidencia de la Republica Oriental del Uruguay, 2012). President Mujica decided to postpone the vote on the proposal as at that point the majority of the Uruguayan people (64 per cent) did not support it (Organization of American States, 2013a).

Debate in 2013

The National Board of Drugs and its local units promoted a number of events throughout the country in May 2013, to further promote the debate around the bill (Presidencia de la Republica Oriental del Uruguay, 2013). Several opponents of the bill expressed their concerns in the media. National Party Congresswoman Veronica Alonso, for example, argued that "the state is not prepared" to regulate the drugs market (Espectador.com, 2013). Alonso set up the 'Por vos, por todos' ('for you, for everyone') campaign in June, which aimed to raise awareness about the consequences of the adoption of the bill and the harms of marijuana. Furthermore, both Alonso and Richard Sander (from the Colorado Party) announced that they would call for a referendum, if the bill became law[93] (Espectador.com, 2013; Observador, 2013). At the beginning of July 2013, voting was postponed as Darío Pérez (from the Liga Federal Frenteamplista), whose stance in the debate remained unclear, indicated that he needed more time to consider the bill (FM Gente, 2013). At that time, Aníbal Gloodtdofsky (from the Colorado Party) argued that he would vote in favour of the bill if his party did not imposed a party-line vote, that is, if members of the Colorado Party did not need to follow the party's position on the topic (Montevideo Portal, 2013). During that period, several National Party members expressed their discontent with the bill, which in turn led to responses from a coalition of civil society groups that supported the initiative, the so-called 'Regulación Responsable' (Larrañaga, 2013; Geoffrey Ramsey, 2013). Finally, on 31 July 2013 the House of Representatives approved the bill (50 votes in favour, 46 against and 3 absences).

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[92] Some of the provisions of this bill, namely those concerning personal cultivation and Cannabis Social Clubs, were adapted and integrated in the later bill of August 2012 (Drug Law Reform, 2013a).

[93] A bill is understood here as a proposed piece of legislation, which is being discussed and has not yet been finally approved. Once that approval is granted the bill will become law.

Current situation

A public opinion survey from August 2013 indicated about 61 per cent of the respondents did not support the bill (CIFRA, 2013). Nevertheless, 78 per cent believe that it is better for consumers to obtain cannabis from regulated stores than from the black market (Espectador.com, 2013). As of the time of writing, the bill awaits approval by the Senate to become law. The bill is currently being debated in the Senate Health Committee and many believe the Senate will vote in November (El Pais, 2013; UNoticias, 2013).[94] The bill has been discussed both in the House of Representatives as in the Senate on a number of occasions (Camara de Senadores, 2013; Camara de Representantes de la Republica Oriental del Uruguay, 2013). During these discussions, those advocating for the bill have emphasised the failure of the so-called 'War on Drugs' and the international drug control regime, and have referred to the conclusions from the latest report from the Organisation of American States (Organisation of American States, 2013) – which seems to suggest that the prohibitionist model has not yielded the expected results (Camara de Senadores, 2013; Organisation of American States, 2013).

The members of Parliament did not reach an agreement regarding the rationale and main goals of the draft law. While its proponents explained that the spirit of the bill aimed to "solve serious problems related to the use of drugs, especially marijuana in this instance, and its associated social consequences" (own translation, Camara de Senadores, 2013) other members of Parliament seemed to think that there were incongruities between the proclaimed goal of protection of public health and what they considered an "introduction of the recreational use of marijuana" (own translation, Camara de Senadores, 2013).[95]

Despite voting in favour of the bill, Congressman Pérez stated that he would still propose a referendum based on the current negative public opinion (República, 2013), and both Sander and Alonso, opponents of the bill, emphasised that they would likewise call for a referendum once the bill becomes law (El Pais, 2013). Other critiques from current politicians focused on the regulatory framework outlined in the draft bill. Congressman Javier Garcia, for example, pointed out the potential difficulties in ensuring that individually grown plants are not grown for commercial purposes (García, 2013).

The bill has thus been subject to extensive discussion and is now pending in the Senate. As mentioned above, after the final vote a referendum is envisaged by some. According to Article 79 of the Uruguayan Constitution, a referendum concerning an approved bill may be called within one year of its promulgation. Signatures from at least 2 per cent of the electorate must be collected within 150 days after promulgation (Article 30, Law 17.244). If the Electoral Court (which has 10 days to decide) finds the

[94] It has recently been reported that due to a Constitutional provision regulating the creation of new positions and generation of expenses in the year before national elections, the bill might undergo further changes. This is due to Art. 17 of the bill, which establishes the Institute for Control and Regulation of Cannabis (IRCCA), as well as Art. 24, which appoints its Director, a remunerated position. However, not everyone agrees with this interpretation (as the IRCCA may be considered as a private entity with public functions) and it is unclear whether it will create significant barriers to implementation.

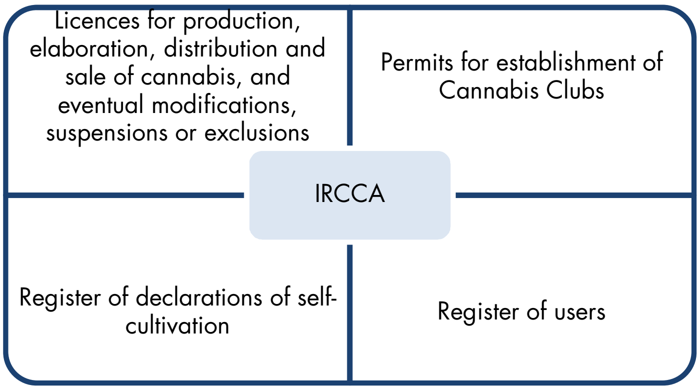
[95] In the original source, respectively: "El espiritu de esta iniciativa estaba en resolver graves aspectos relativos al consumo de drogas, fundamentalmente en este caso de la marihuana, y las consecuencias sociales que este ha traido"; "este proyecto de ley tiene la finalidad de introducir el consumo recreativo de la marihuana" (Camara de Senadores, 2013).

initiative successful, a call is then made for a preliminary vote on whether to support the call for a referendum (within 45 days of the positive decision by the Electoral Court). If over 25 per cent of the electorate votes to join the appeal, the law will face a referendum within 120 days (Article 35, Law 17.244).[96]

2.5.2. Description of proposed changes

The bill proposes the legalisation of regulated production and sale of cannabis in pharmacies (Camara de Representantes de la Republica Oriental del Uruguay, 2013).[97] Home production and collectives (sometimes referred to as 'clubs' or 'buyers' clubs') would also be allowed. A new agency, the Instituto de Regulacion y Control del Cannabis (IRCCA), would be established to issue permits for production and maintain registries for users, home producers, and those participating in collectives (Camara de Representantes de la Republica Oriental del Uruguay, 2013). Figure 2.3 provides an overview of this proposed Institute. Production and commercialisation of hemp would be regulated by the Ministry of Agriculture and Fisheries.

Figure 2.3. An overview of IRCCA's key licensing activities



The bill does not specify which criteria will be used to grant the permits, and it does not provide information regarding the characteristics of these registries, such as whether individuals will be allowed to apply for multiple registries. It is likely that these issues will be decided by the IRCCA.

The proposed legislation foresees that licensed firms may produce cannabis for medical and non-medical purposes. The cannabis produced by these firms can only be sold at authorised pharmacies. In the case of cannabis for non-medical purposes, supply shall not exceed the limit of 40 grams per user per month. Sale to minors is not allowed, and as with tobacco, advertisement is also not allowed (regulations pertaining to

[96] A referendum appeal does not suspend the legislation (Article 36, Law 17.244).

[97] Psychoactive cannabis is defined in the bill as including the flowering tops with or without fruit of the female cannabis plant, except for the seeds and the leaves separated from the stem, including its oils, extracts, potential pharmaceutical preparations, resins and the like whose natural THC content is greater than or equal to 1% of its volume.

smoke-free public places will be enforced with regard to cannabis as well). Medical use of cannabis will be possible upon presentation of a valid medical prescription in authorised pharmacies.

Home production (personal use, up to six plants) and cannabis clubs are also permitted under the proposed bill. The collectives may have 15 to 45 members and are allowed to cultivate up to 99 plants (proportionally to the number of members).

Table 2.3 provides an overview of the proposed models of production and distribution.

Table 2.3. Models of production and distribution as foreseen in the draft bill

Production		Distribution
Domestic	• Personal use • Up to 6 plants	• Not applicable
Cannabis Clubs	• For members (between 15 and 45) • Up to 99 plants (proportional to number of members)	• For members only
Other enterprises	• Medical purposes	• Authorised pharmacies • Upon medical prescription
	• Other purposes (recreational)	• Authorised pharmacies • Not exceeding 40 grams per user per month

The IRCCA will control and oversee production and distribution.[98] The draft framework foresees a number of sanctions associated with the unauthorised production of cannabis (Regulacion Responsable, 2013; Camara de Representantes de la Republica Oriental del Uruguay, 2013). Violations of the existing rules on licences, and notwithstanding any other criminal liability potentially applicable, might be sanctioned with:

- Subpoena
- Fine up to 2,000 UR ('readjustable units')
- Confiscation of the product or items used to commit the offence
- Destruction of the substance, when applicable
- Suspension of the offender from the permits register
- Temporary or permanent banning
- Partial or total, temporary or permanent closing of the establishment(s).

[98] Other bodies and public entities might also be competent to monitor compliance and apply sanctions.

2.5.3. Official government statements or discussions about these policy changes in the context of international law

A government statement accompanying a draft cannabis legalisation bill of 2012 noted that "the Single Convention and the policies deriving from it, were, like any other product of human culture, the result of their time, with associated potentials and weaknesses and must – today – be critically revised, modified and improved".[99]

A statement released in August 2013, Raymond Yans, President of the INCB, emphasised that Uruguay should ensure that it complies with international law (International Narcotics Control Board, 2013).[100] Previously, in its 2012 Annual Report, the INCB had already stated that the Uruguayan proposal would be a violation of international drug conventions (International Narcotics Control Board, 2013). Moreover, the Board indicated that "non-compliance by any party with the provisions of the international drug control treaties could have far-reaching negative consequences for the functioning of the entire international drug control system" (International Narcotics Control Board, 2013, p. 36).[101] Following the announcements made by the Uruguayan government in 2012, the INCB proposed a mission to Uruguay to address the issue (Jelsma, 2012).[102] However, the government refused to accept this mission and submitted the draft bill in August 2012 (International Narcotics Control Board, 2013; Drug Policy Alliance, 2012). Key figures and (former) politicians have also been expressing their opinions regarding the new legislation in the media. For example, former Vice President Gonzalo Aquirre Ramírez of the National Party stated that the bill could be a violation of international drug conventions to which Uruguay is a party (Ramírez, 2013).

In September 2013, during a panel discussion hosted by the Uruguayan mission about the country's new drug policy, a Uruguayan diplomat referred to the international context. According to the Organization of American States website, "The Uruguayan diplomat indicated that his country 'is opting for an

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[99] In the original source: "Esta Convencion y las politicas que de ella derivan, fueron como todo producto de la cultura humana, resultado de su tiempo con sus potencialidades y sus debilidades u deben ser – al dia de hoy – criticamente reevisadas, modificadas y mejoradas".

As of 22 November 2013: http://medios.presidencia.gub.uy/jm_portal/2012/noticias/NO_F156/proyecto.pdf

[100] INCB issued a press statement about Uruguay on August 2013, indicating that the "draft law under consideration in Uruguay which, if adopted, would permit the sale of cannabis herb for non-medical use […] would be in complete contravention to the provisions of the international drug control treaties, in particular the 1961 Single Convention on Narcotic Drugs, to which Uruguay is a party". It therefore urged the Uruguayan authorities "to ensure that the country remains fully compliant with international law which limits the use of narcotic drugs, including cannabis, exclusively to medical and scientific purposes."

[101] In 2011, the INCB had already, and in similar terms, expressed its concern regarding Bolivia's decision to denounce the Treaty (and reaccess with reservations), considering that "such approach would undermine the integrity of the global drug control system" (Room, 2012; International Narcotics Control Board, 2011).

[102] As described in its website, the INCB regularly undertakes country missions in order to discuss, with the national authorities, the application of the drug conventions as well as the drug control situation in that country. The findings of these missions are usually reflected in the INCB Annual Report. For more information please see, as of 22 November 2013: http://www.incb.org/incb/en/treaty-compliance/index.html

alternative path in the framework of a comprehensive and balanced strategy aimed at regulating the cannabis market with a proposal in accordance with national conditions to address the drug problem.' In this regard, he noted that it seeks the same objectives as those established in ratified international treaties but offers an opportunity to update them, 'based on the faithful compliance with human rights'" (Organization of American States, 2013b). Furthermore, whilst it was widely speculated that he would, President Mujica did not address the new bill during his speech before the UN General Assembly in September 2013 (UN News Centre, 2013). Notably, the Guatemalan president did refer to the recent developments in Uruguay. President Otto Pérez Molina suggested that the Guatemalans "respect and are proud of" the actions taken by Mujica's government (International Drug Policy Consortium, 2013).

3. An overview of other initiatives

3.1. Introduction

This chapter focuses on jurisdictions that allow cannabis production for medical or scientific purposes:[103] Canada, Chile[104], Czech Republic, France, Israel, Germany, the United Kingdom and Switzerland. In addition, we also included jurisdictions where proposals for recreational use have been (or will be) submitted, thereby mentioning relevant aspects of the debate surrounding these proposals. These jurisdictions include: Chile, Denmark, Portugal and Switzerland. While the Danish Copenhagen City Council proposal has not been formally introduced, we include it in the chapter since it was developed following a previous proposal that was rejected by the government, thereby adapting similar principals and outlining details of the scheme. While there also have been discussions of cannabis reforms in Mexico City,[105] a proposal has not yet been formally presented as of 18 November 2013 and specific details are not clear to date.[106] Thus, we do not include it in this section.

Section 3.2 describes the identified developments in cannabis production initiatives for medical purposes. Subsequently, Section 3.3 describes the identified developments relating to scientific purposes. The main aim of these sections is to identify whether there are regimes that allow cannabis production for medical or scientific purposes, how these are organised and, where possible, what interpretation is given to 'medical' or 'scientific' cannabis production with regard to the international treaties.[107] A summary of the

[103] As mentioned in Chapter 1, this list of jurisdictions that allow medical/scientific production is not intended to be exhaustive; there are other jurisdictions throughout the world that make allowances for cannabis production for these purposes. Our goal was to provide summaries for countries and jurisdictions with particularly noteworthy production regimes.

[104] Portugal is also briefly mentioned in a footnote in the Chilean section as it is similar to the Chile case.

[105] One of the proposals being discussed is that of CSCs where members would pay a subscription to receive up to 30 grams of cannabis per month (Huffington Post, 2013; Grillo, 2013).

[106] Based on our research and confirmed through personal communication with one of our experts.

[107] In the UN Single Convention on Narcotic Drugs from 1961, Article 28(1) regarding the control of cannabis it is stated that: "If a Party permits the cultivation of the cannabis plant for the production of cannabis or cannabis resin, it shall apply thereto the system of controls as provided in Article 23 respecting the control of the opium poppy". Article 23 of the Convention lists the following requirements: '(1) A Party that permits the cultivation of the opium poppy for the production of opium shall establish, if it has not already done so, and maintain, one or more government agencies (hereafter in this article referred to as the Agency) to carry out the functions required under this article. (2) Each such Party shall apply the following provisions to the cultivation of the opium poppy for the production of opium and to opium: a) The Agency shall designate the areas in which, and the plots of land on

relevant legal aspects is provided for each country. Furthermore, where applicable, these country descriptions include the criteria for production within the different regimes, the type of regulation and the interpretation of 'medical' and/or 'scientific' purposes in each country with respect to the international treaties context. Finally, Section 3.4 discusses recent proposals to introduce new production initiatives for recreational use.

3.2. Developments in cannabis production initiatives for medical purposes

3.2.1. Canada

Cannabis production is illegal under the Controlled Drugs and Substances Act, except in cases where it is authorised by regulation.[108] There are two categories of symptoms that make an individual eligible for medicinal cannabis. Category 1 includes "any symptom treated within the context of compassionate end-of-life care or symptoms related to specific medical conditions" such as multiple sclerosis or spinal cord disease (Health Canada, 2013). Category 2 symptoms include "a debilitating symptom that is associated with a medical condition or with the medical treatment of that condition, other than those described in Category 1" (Health Canada, 2013). The 2008 *Sfetkopoulos v. Canada* case struck down previous federal regulations stipulating that cannabis production must be limited to those who already have a medical licence to consume cannabis, and that only one plant may be grown at one time.[109] The ruling allowed those with production licences to grow multiple plants to be sold to those with medical permits, even if the producers themselves were not licensed consumers of cannabis. Currently, there are three options to obtain medicinal cannabis through Health Canada's Marihuana Medical Access Regulations (MMAR) programme: (1) Dried cannabis as supplied by Health Canada;[110] (2) production of an individual's own

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which, cultivation of the opium poppy for the purpose of producing opium shall be permitted. b) Only cultivators licensed by the Agency shall be authorized to engage in such cultivation. c) Each licence shall specify the extent of the land on which the cultivation is permitted. d) All cultivators of the opium poppy shall be required to deliver their total crops of opium to the Agency. The Agency shall purchase and take physical possession of such crops as soon as possible, but not later than four months after the end of the harvest. e) The Agency shall, in respect of opium, have the exclusive right of importing, exporting, wholesale trading and maintaining stocks other than those held by manufacturers of opium alkaloids, medicinal opium or opium preparations. Parties need not extend this exclusive right to medicinal opium and opium preparations. (3) The governmental functions referred to in paragraph 2 shall be discharged by a single government agency if the constitution of the Party concerned permits it". This is a non-exhaustive list as Article 2, §1 states that "the drugs in Schedule I are subject to all measures of control applicable to drugs under this Convention".

[108] Controlled Drugs and Substances Act, SC 1996, c 19. As of 22 November 2013: http://canlii.ca/t/51xdc

[109] *Sfetkopoulos v. Canada* (Attorney General), 2008 FC 33 (CanLII). As of 22 November 2013: http://canlii.ca/t/1vdjn

[110] From 2002 to 2009, federal cannabis was produced in an abandoned mine in Flin Flon, Manitoba. It shut down following a disagreement between the management of the mine operator, and the agricultural company responsible for growing the cannabis. Cultivation now takes place in an undisclosed location in Canada. See Patrick White, 'Flin Flon's pot mine goes up in smoke', *The Globe and Mail*, 21 July 2009. As of 22 November 2013: http://www.theglobeandmail.com/news/national/flin-flons-pot-mine-goesupinsmoke/article1226420/Furthermore, the programme was 'criticized for its lengthy application process and restrictive criteria, as well as for approved users'

supply through a Personal-Use Production License (PPL); and (3) designating another person to produce for the patient through the Designated-Person Production License (DPL) (Health Canada, 2013; Medical Marijuana Canada, 2013). Thus, options two and three involve cultivation of cannabis by private citizens. In the *Sfetkopoulos v. Canada* case, the court briefly addressed the international treaties context. The court argued that Canada complied with the requirements for medical purposes "except for the requirement of a prescription for any cannabis authorised for individual medical use, although the MMAR system may constitute an adequate substitute". [111] However, in a later section the court argued that there might be more issues vis-à-vis the Convention, although domestic law would still prevail over an unimplemented treaty as the Convention is only partly implemented in Canadian law. In response to a comment by the minister, who argued that allowing the growing of multiple plants per person would obligate the government to collect the produced cannabis under the 1961 Single Convention, the court ruled the following:

> "This appears to me to be a non sequitur. If the Convention requires that all 'cultivators' of marihuana must deliver their 'total crops' to the Agency (as Article 23 specifies) then presumably holders of PPLs and DPLs, even though they produce for one person, should deliver their 'total crops' to Health Canada. That is not done: the MMAR contemplates that production is consumed by a user, whether produced by himself or by his designated producer. I have failed to see how allowing a designated producer to produce for multiple users creates some new problem vis-à-vis the Convention which does not already exist. Counsel agreed that the Convention has not been made part of the law of Canada as such although parts of it have been implemented by Canadian law. To the extent that the MMAR, if they were to permit the holder of the DPL to produce for more than one ATP [Authorization to Possess] holder, might conflict with the Convention, this domestic law must prevail over an unimplemented international treaty. Further if to follow the requirements of the Convention were to conflict with Canadian constitutional requirements such as the guarantees in Section 7 of the Charter then the Canadian constitution must prevail in this Court".[112]

From April 2014 onwards, however, the new Marihuana for Medical Purposes Regulations will come into effect as the increase of people that applied for the MMAR programme, from 500 at the start in 2001 to over 30,000 in 2013, led to "unintended consequences for public health, safety and security as a result of allowing individuals to produce marihuana in their homes" (Health Canada, 2013). Hence, from April 2014 onwards, domestic cannabis production for medical purposes will lapse and instead there will be increased access to cannabis through health care providers. Additionally, Health Canada will cede its ability to produce and distribute cannabis, while at the same time increasing the regulation of private

inability to obtain customized marijuana strains from governmental sources. These problems have allegedly led many medical marijuana users in Canada to continue their MMU [Medical Marijuana Use] without a formal exemption provided by the MMAP'(Room, 2010, pp. 101–102).

[111] *Sfetkopoulos v. Canada* (Attorney General), 2008 FC 33 (CanLII), point 17.

[112] *Sfetkopoulos v. Canada* (Attorney General), 2008 FC 33 (CanLII), point 17.

producers and sellers (Health Canada, 2013). While most small-time growers will have their existing cultivation licences nullified, Health Canada will open up the medicinal cannabis market to large, privately owned corporations for the first time (Stuart, 2013).

An ongoing issue concerning cannabis production and consumption is the 2011 *R. v. Mernagh* case that is currently going through the Ontario Supreme Court. It surrounds the allegation put forth to the federal government by Matt Mernagh that the MMAR programme provides insufficient access to medicinal cannabis for those that have a legally established need for it. In April 2011 the judge presiding over the case ruled that the MMAR was ineffective, and as a result, all laws prohibiting cannabis production and consumption are unconstitutional due to their unintended effect of blocking access to patients' medicine, thereby referring to the Charter of Rights and Freedoms.[113]

3.2.2. Chile

In Chile, the Agricultural Services[114] (Servicio Agricola y Ganadero, SAG) is competent to issue authorisations for the cultivation of cannabis for medical purposes (Ley num. 20.000, 2005).[115] To our knowledge this agency has only granted one permit up until now.[116] The authorisation was granted in 2009 to the medical research company AgroFuturo Ltda. Soon afterwards, the Minister of Health commented that authorisation was "absurd", indicating it was not in line with the country's drug control policy (La Tercera, 2011; Excelsior, 2011). On the basis of Decree no. 405[117] the permit was later withdrawn before the start of cultivation (Ministerio de Salud, 1984; Fundacion Progresa, 2012). The Public Health Institute (Instituto de Salud Publica, ISP)[118] has furthermore refused to register the initiative in the Health or Sanitary Registry on the basis that such register was not allowed as the pharmaceutical substance to be produced would contain cannabis sativa (Transnational Institute, 2013).

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[113] *R. v. Mernagh*, 2011 ONSC 2121 (CanLII). As of 22 November 2013: http://canlii.ca/t/fl0vv

[114] The Servicio Agricola y Ganadero is the government agency responsible for supporting the development of agriculture, forestry and livestock, through the protection and improvement of the health of animals and plants (SAG, n.d.).

[115] In 2005, a proposal to authorise self-cultivation of cannabis for medical purposes was brought before Parliament, but the project was archived. For more information please see, as of 22 November 2013: http://www.senado.cl/appsenado/templates/tramitacion/index.php?boletin_ini=3812-07

[116] This is similar to the Portuguese case. According to the current legislation (Decreto Lei no. 15/93; Decroto Regulamentar o. 61/94), a Government agency will be responsible for issuing permits for cultivation of the substances included in Table I (wherein cannabis is listed) for medical, veterinary or scientific purposes. This agency – Autoridade Nacional do Medicamento e Produtos de Saúde, I. P (INFARMED), will oversee the authorised activities (such as cultivation, production, manufacture, wholesale trade, distribution, import, export, transit, acquisition, sale, delivery and possession). To our knowledge no such permits have been granted, particularly with regards to cannabis.

[117] This decree prohibits the production, preparation, distribution and retail of products containing dronabinol, a substance extracted from cannabis sativa and which would have been used in the production of herbal infusions by AgroFuturo.

[118] The Instituto de Salud Publica is the public health institute of Chile, which provides technical and scientific expertise, monitoring and control of public health care in the country (ISP, n.d.).

In October 2012, Chile's Supreme Court ruled that the withdrawal of the authorisation was unconstitutional on the grounds that the SAG did not conduct a preliminary hearing and thus did not respect the principle of equality before the law (La Tercera, 2011; El Ciudadano, 2011). While AgroFuturo has since then attempted to initiate production, the company has faced difficulties in receiving a permit and a final decision has not yet been made.

3.2.3. Czech Republic

The Czech Criminal Code prohibits cannabis cultivation for non-medical use (Czech National Monitoring Centre for Drugs and Drug Addiction, 2010). On 30 January 2013, the Czech Senate passed a bill regarding the option of using cannabis for medical purposes. This Act complies with international conventions regarding the control of narcotic and psychotropic substances. Within that context, the Czech bill stresses that medical cannabis will solely be provided for medical purposes, under a controlled regime, and adequate provision will take place solely by pharmacies on a prescription basis. Although civil society groups and activists argued that patients should be allowed to grow medical cannabis on their own, this was not included in the final bill (Czech National Monitoring Centre for Drugs and Drug Addiction, 2012). However, corporations and individual entrepreneurs are allowed to produce cannabis for medical purposes when licensed by the State Institute for Drug Control (Czech National Monitoring Centre for Drugs and Drug Addiction, 2013).

Although most of the regulations under this new Act came into effect on 1 April 2013, the regulations regarding the production of cannabis for medical purposes, the selection proceedings for licensing, the processing of medical cannabis and the purchase and transport to pharmacies are postponed until 1 April 2014. During this period the State Institute for Drug Control will be responsible for setting up the medical cannabis production system in the Czech Republic. This will include creating selection procedures for corporations and individual entrepreneurs applying for a medical cannabis cultivation licence. Until the system for medical cannabis production is set up, medical cannabis can be imported under the supervision of the Inspectorate for Narcotic and Psychotropic Substances (Czech National Monitoring Centre for Drugs and Drug Addiction, 2013).

3.2.4. France

France is often cited as having the strictest cannabis laws in the EU, with cannabis offences being on equal legal footing as drugs such as heroin and crack cocaine. On 7 June 2013, a new law came into effect allowing products containing cannabis or its derivatives "to be used in the making of medicinal products" (The Local, 2013).

Decree No. 2013-473 amends Article R. 5132-86 Code of Public Health, which previously prohibited cultivation for all purposes, now allows the Director General of the National Security Agency of Medicines and Heath Products to authorise the cultivation and purchase of cannabis for therapeutic

use.[119] Decree No. 2013-473 mentions that it is in conformity with directive 2001/83/CE of the European Parliament and of the European Council directive of 6 November 2001 relating to medicinal products for human use. While this development in France has increased the scope for potential medicinal applications of cannabis, there are no current initiatives which explicitly address the issue of cultivation and a possible source of medicinal cannabis supply will come from an established company in the Netherlands (The Local, 2013).

3.2.5. Israel

Cannabis production for other than medical and scientific purposes is not permitted in the country. Following the 1995 recommendations from a subcommittee of the Israeli Parliament Drug Committee, the government established a programme to regulate the access to medical cannabis (in terms of both production and use), under the supervision of the Ministry of Health (International Association for Cannabinoid Medicines, 2008; Mader, 2013). In Israel, seven government-approved growing centres are currently active. 'Safed' is the largest, with an established collaboration with the Hebrew University (Kershner, 2013). In terms of medical cannabis distribution centres, MECHKAR is the central point, where patients can obtain cannabis and where training and counselling sessions for patients using cannabis are also offered (International Association for Cannabinoid Medicines, 2008). While initially only the Ministry of Health was authorised to issue permits for the use of medical cannabis (upon request of any senior physician in the country), since 2010 nine physicians may also approve and issue permits. In August 2011, the Minister of Health publicly recognised the therapeutic value of cannabis and announced the development of a new programme for production and distribution of cannabis for medical and scientific purposes. No details of this programme have officially been made available. The new programme has not yet been introduced (it was initially scheduled to begin in 2012) and it has been reported that the programme might be implemented by the end of 2014 (Kershner, 2013; Wilson, 2013). However, more recently, in March 2013, it has been reported that Israeli and Czech officials might have discussed the possibility of exporting medical cannabis to the Czech Republic (Winer, 2013).

3.3. Developments in cannabis production initiatives for scientific purposes

3.3.1. Germany

Section 29(1) of the German Narcotics Act (Betäubungsmittelgesetz, BtMG) prohibits all narcotic drugs related acts, with the exception of consumption.[120] Cannabis falls under Schedule I and is defined as

[119] Legifrance, Decret n2013-473 du 5 Juin 2013. As of 22 November 2013: http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=AAB218B0B82F78E50E440E24B4A4EC82.tpdjo11v_1?cidTexte=JORFTEXT000027513604&dateTexte&oldAction=rechJO&categorieLien=id

[120] Betäubungsmittelgesetz (BtMG), 1981: 'Betäubungsmittelgesetz in der Fassung der Bekanntmachung vom 1. März 1994 (BGBl. I S. 358), das durch Artikel 4 Absatz 7 des Gesetzes vom 7. August 2013 (BGBl. I S. 3154)

"marijuana, plants and parts of the plants of the genus cannabis" ("Marihuana, Pflanzen und Pflanzenteile der zur Gattung Cannabis gehörenden Pflanzen") and all related acts, except consumption, are prohibited.[121] Cannabis in the form of a medical product, Sativex, is listed under Schedule III. Under Section 3 of the Act, the Federal Institute for Drugs and Medical Devices (Bundesamt für Arzneimittel und Medizinprodukte, BfArM) may grant a licence to cultivate cannabis (i.e. drugs listed under Schedule I) for scientific purposes or other purposes in the public interest. To our knowledge, and as verified by a legal expert, no exemptions to cultivate cannabis for medical reasons, for personal use, have been granted. In December 2012, the Supreme Administrative Court of Münster (OVG Münster) ruled that severely ill patients may be allowed to cultivate cannabis for personal use through applying at the Federal Institute for Drugs and Medical Devices, only if there is no other legal alternative (International Association for Cannabinoid Medicines, 2012).[122] The court ruled that this situation was falling outside German Drug Law and Germany's obligations under the Single Convention. However, the decision of the OVG Münster is not final. The Federal Administrative Court overruled the OVG Münster in May 2013 and referred the case back.

3.3.2. United Kingdom

Legislation regarding the control and supply of drugs in the United Kingdom is defined in the Misuse of Drugs Act 1971.[123] According to Section 6 of this Act, cannabis cultivation for personal use is not allowed by national law. However, according to the exceptions made in sections of both the Misuse of Drugs Act 1971 (Section 7) and the Misuse of Drugs Regulations 2001 (Section 12),[124] the Secretary of State may allow, when it is in the public interest, cannabis production for research or other special purposes, yet only after licensing. A definition of 'research' and 'public interest' is not provided in either document. However, in May 2013, in a response to a request for information, the Home Office did clarify its policy regarding 'other special purposes': "Home Office policy with regard to "other special purposes" provides that licences may be issued for the cultivation of cannabis plants with a low THC (tetrahydrocannabinol) content for the production of hemp fibre for industrial purposes or the obtaining of seeds which are then pressed for their oil. For both of these uses, there needs to be a defined commercial end use and the Home Office only licences plants grown from approved seed types with a THC content not exceeding 0.2%' (Home Office, 2013). The Home Office emphasises that it does not issue licences to cultivate cannabis for personal use. Data recorded by the English government shows that the total number of issued licences

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geändert worden ist'. As of 22 November 2013: http://www.gesetze-im-internet.de/bundesrecht/btmg_1981/gesamt.pdf

[121] Ibid.

[122] OVG Münster, ZVR-Online Dok, 31/2013. As of 22 November 2013: http://www.zvr-online.com/gesamtuebersicht/2013/maerz-20132/ovg-muenster-medizinalhanf-im-eigenbau/ The overruling of the Federal Administrative Court has been verified by a legal expert.

[123] Misuse of Drugs Act, 1971. As of 22 November 2013: http://www.legislation.gov.uk/ukpga/1971/38/contents

[124] Misuse of Drugs Regulations 2001. As of 22 November 2013:

http://www.legislation.gov.uk/uksi/2001/3998/pdfs/uksi_20013998_en.pdf

to cultivate cannabis is over 350 in the period 2000–2010 (Home Office, 2012). In 2011, the government announced the purposes of the first ten issued licences of that year, such as licences for cannabis cultivation for medical research into a cannabis-based medicine and cultivation for the production of industrial hemp (Home Office, 2011).

3.3.3. Switzerland

Article 8 of the 1951 Swiss Federal Narcotics and Psychotropic Substances Act (BetmG) prohibits cannabis cultivation for non-medical and medical purposes.[125] Under this article, "when not being in contrary to international agreements" and after permission from the Federal Office of Public Health, scientific research into the psychoactive constituents of cannabis and drug development is allowed (Druglibrary.eu, 2013).[126]

3.3.4. Conclusion for initiatives regarding medical or scientific purposes

The previous sections reviewed countries' policies concerning cannabis production for medical or scientific purposes. Although all of these selected countries apply some form of state regulation, such as a controlled licensing system, the type of regime differs per country. For example, while Israel has developed a system of government-approved growing centres, in Canada individuals can cultivate cannabis at home through the MMAR programme (until 1 April 2014). Furthermore, the end product may vary from raw cannabis, for example in Czech Republic, to cannabis-based medicines in France.[127] Also, whilst some countries hold back on granting permits (e.g., Chile), others seem to grant permits on a large scale (e.g., Canada).

3.4. Proposals to introduce new production initiatives for recreational use

This section provides an overview of proposals discussed to introduce new production initiatives both at the national and regional level, thereby describing the current legal frameworks. The proposed models of cannabis production, their rationale and the main arguments present in those discussions are described.

3.4.1. Chile

1) Summary of current legal framework

According to the key Chilean law on drugs and its regulatory framework cannabis is considered at the same level as cocaine, amphetamines or heroin (Ley num. 20,000, 2005; Ministerio del Interior, 2008). This law increased the sanctions associated with drug related crime and created the crime of 'micro-

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[125] Bundesgesetz über die Betäubungsmittel und die psychotropen Stoffe (Betäubungsmittelgesetz, BetmG), SR 812.121, vom 3. Oktober 1951 (Stand am 1. Oktober 2013).

[126] Bundesgesetz über die Betäubungsmittel und die psychotropen Stoffe (Betäubungsmittelgesetz, BetmG), SR 812.121, vom 3. Oktober 1951 (Stand am 1. Oktober 2013).

[127] The French decree speaks of cannabis or its derivatives.

trafficking', foreseeing penalties for the possession of small quantities of drugs ('microtrafico')(Ley num. 20,000, 2005; Fundacion Progresa, 2012; Transnational Institute, 2013). As the law does not indicate any specific quantities, the judge will assess in each particular case whether the substance was intended for personal consumption or trafficking (Transnational Institute, 2013). Cultivation of cannabis in a private space and for personal and immediate use constitutes a minor offence and may be sanctioned with an administrative sanction (Ley num. 20,000, 2005).

2) Proposals and debate

A number of initiatives regarding cannabis production have been brought before Parliament in the last decade (Biblioteca del Congreso Nacional de Chile, 2013; Transnational Institute, 2013). The 2003 proposal which was formally rejected two years later was based on the idea that as private consumption of cannabis was not a criminal offense; users of this substance should be allowed to privately produce it in order to avoid contact with the illicit market (Senado - Republica de Chile, n.d.). The bill's opponents argued that cannabis is an addictive substance that causes damage to health. Some of those involved in the debate feared that consumption of cannabis would lead to experimentation with other illegal drugs and were concerned that the proposed bill would not help reduce illicit trafficking and could instead result augment the phenomenon of 'micro-trafficking' (Senado - Republica de Chile, 2005).

Several other proposals have been discussed since then. Table 3.1 below provides an overview of the most pertinent debates.

Table 3.1. Overview of key debates about cannabis production

Date	Main aim of proposed legislation	Outcome of Parliamentary discussion	Relevant documents
2013	To amend Art. 4 of Law 20.000 setting new criteria of quantity (weight) and quality (purity) of cannabis in order to distinguish between users and dealers	Ongoing discussion	http://www.camara.cl/pley/pley_detalle.aspx?prmID=9184&prmBL=8777-25
2012	To authorise home growing for personal and therapeutic use, as well as the possession and transport of the substance (in quantities to be determined)	Ongoing discussion	http://www.senado.cl/appsenado/templates/tramitacion/index.php?boletin_ini=8510-07
2003	To amend Law 19.366, decriminalising cultivation and production of cannabis or of other narcotic or psychotropic substances for immediate use	Project was rejected	http://www.senado.cl/appsenado/templates/tramitacion/index.php?boletin_ini=3269-07

As indicated in Table 3.1, there have been recent proposals to amend the current legislation, which are still pending a final decision. Furthermore, the discussion around the cannabis regime has been present in the current presidential campaign, with some of the candidates expressing their position on the topic. For

instance, Evelyn Matthei (candidate from the Independent Democrat Union Party's) considered the recent policy developments in Uruguay as an "interesting" experiment, worth discussing (ADN Noticias, 2013). Also Michelle Bachelet, who had previously been involved in the classification of cannabis as a hard drug, has recently shown an interest in debating and reviewing the current drug policy (Emol, 2013; La Tercera, 2013).

Furthermore, in June 2013 a group of MPs requested an assessment of Law 20.000[128] based on the following argument: "Chilean society has changed their perception on this subject. The social media and public opinion are openly discussing it and require a serious, informed and pluralistic analysis by their legislators" (own translation, Camara de Diputados de Chile, 2013).[129]

3.4.2. Denmark

1) Summary of the current legal framework

Cannabis production for medical and non-medical use is not allowed under Danish national law. The Euphoriants Act of 1955 prohibits the import, export, sale, purchase, supply, receipt, manufacture, processing or possession of drugs as listed in the Annex of the Act, including cannabis (EMCDDA, 2013). It is legal to cultivate hemp for industrial purposes such as textiles, provided that it contains a low amount of THC. Yet, a licence should be issued by the Danish Medicines Agency in order to grow hemp for these purposes (Ministeriet for Fødevarer Landbrug og Fiskeri, 2013).

2) Proposals and debate

The Copenhagen City Council has recently proposed two plans to introduce new cannabis regulations of which the first one was rejected by the government and of which the second one awaits submission to the government for approval. The 2012 proposal announced by the Copenhagen City Council aimed to introduce a new cannabis regulation in Copenhagen (Transnational Institute, 2013). This would involve state-run hashish and cannabis dispensaries; the government would cultivate cannabis itself or would issue licences for the production of cannabis. The Council's plan was rejected by the government as the Minister of Justice argued that this initiative would likely increase the availability and use of cannabis (Stanners, 2012).

In March 2013, a 'Cannabis Conference' was held by the Copenhagen City Council to "qualify a concrete and credible basis for decisions on the implementation of a pilot scheme for a legalised marijuana market in Copenhagen, from production to sale" (Københavns Kommune, 2013). The City Council believes that "current drug legislation has failed to prevent the extensive use, abuse and crime associated with cannabis"

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[128] The House of Representatives includes a unit responsible for the evaluation of the different legislative instruments. Civil society organisations' views are considered within this evaluation process.

[129] In the original source: "[...] la sociedad chilena ha cambiado su percepción sobre este tema, las llamadas redes sociales, la opinión pública están en franca discusión y requieren de sus legisladores el análisis serio, informado y pluralista de este cuerpo legal para que así esté a la altura de las nuevas expectativas de la ciudadanía" (Camara de Diputados de Chile, 2013).

and argues that the proposed initiative addresses these points of concern (Københavns Kommune, 2013, p. 3). The main objective of the pilot scheme is to combat the illegal trading market and related crime (Københavns Kommune, 2013). Additionally, the proposal stresses the possibility of contact with users through the cannabis outlets where information, advice and treatment can be offered (Københavns Kommune, 2013). While suggesting local production to supply the outlets, the City Council argues that cannabis supply from foreign producers would be the preferable option, for example from Washington or Colorado (as the proposed initiative would initially involve a three-year trial). However, the City Council acknowledges that foreign supply might not be allowed according to the International Conventions, which prohibit international cannabis transportation. In addition, it would also constitute a "breach of Washington state laws as well as federal law" (Cremer, 2013). In order to implement the scheme, according to the City Council, new legislation at the national level is necessary regarding cannabis import or production (Københavns Kommune, 2013). To date a decision has not been made and following the 'Cannabis Conference' in March in which experts' advice was sought, it was announced that a revised proposal would be submitted by the end of 2013 (Københavns Kommune, 2013). Based on this research, there has not been a government response to date.

3.4.3. Portugal

1) Summary of current legal framework

Unauthorised cannabis production,[130] cultivation and preparation are offences treated as drug traffic, attracting an imprisonment sentence of between four to twelve years (Decreto Lei no. 15/93, 1993; EMCDDA, n.d.).[131] Cultivation for personal use is also illegal and associated with a reduced sentence of imprisonment of up to three months or a fine when not exceeding the amount necessary for the average individual consumption during the period of ten days (Decreto Lei no. 15/93, 1993; Martins, 2001).

2) Proposals and debate

There has been some debate regarding cannabis production in the country. In the last years, the left-wing party Bloco de Esquerda has presented two bills before Parliament, which were not approved. The 2009 draft bill aimed to legalise cannabis for personal consumption, and included a number of provisions on cultivation (Bloco de Esquerda, 2009). The 2013 draft bill proposed the establishment of a legal framework for Cannabis Social Clubs, in addition to the legalisation of cannabis cultivation for personal consumption (Bloco de Esquerda, 2013). Those advocating for this bill praised the potential impact of the proposed policy in the country and sought to address the issue of cultivation for personal use, which they thought was an important policy aspect not adequately framed under the current legislation (Auto Cultivo e Clubes Sociais de Canabis no Parlamento, 2013). Bloco de Esquerda highlighted that the legalisation of

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[130] As explained in 3.2.2., a public agency is competent to issue permits for the cultivation of cannabis for medical, veterinary or scientific purposes.

[131] The law foresees also other mitigating and aggravating circumstances and introduces a special regime for the 'addict-trafficker'. For more information regarding these penalties please see (Decreto Lei no. 15/93, 1993).

production for personal use would help reduce the harms associated with the black market. Helena Pinto, the MP who presented the bill before Parliament, referred to the positive experience of the Cannabis Social Clubs in Spain and declared that this framework "would not compromise the respect for the International Conventions which prohibit commercialisation" (Auto Cultivo e Clubes Sociais de Canabis no Parlamento, 2013). This proposal was also rejected, on the basis that legalisation of cultivation and the establishment of Cannabis Social Clubs could stimulate consumption, which would necessarily entail risks for public health (Auto Cultivo e Clubes Sociais de Canabis no Parlamento, 2013), among other reasons.

3.4.4. Switzerland

1) Summary of the current legal framework

Article 8 of the 1951 Swiss Federal Narcotics and Psychotropic Substances Act (BetmG) prohibits cannabis cultivation for non-medical and medical purposes.[132] The cultivation of hemp for other purposes is permitted under the Swiss Narcotics Act.

2) Proposals and debate

Increasing Swiss cannabis consumption in the early 2000s led to a reassessment of national drug policy, suggesting that the narcotics control law should be amended to "introduce *de jure* changes exempting personal cannabis possession and use from any penalties, and also to allow some cultivation and trade for personal use under certain conditions, including provision for licensed retail outlets" (Room, 2010, p. 98), thereby remaining compatible with the international conventions (Savary, 2009).

Changes to the federal constitution reflecting this new approach failed to gain parliamentary approval on two separate occasions, with the final rejection in June 2004 (Savary, 2009). The visibility of official and semi-official structures of production and distribution that emerged while the amendment was under consideration caused hesitancy amongst politicians and has been cited as a primary obstacle to legislative approval (Killias, 2011).

In 2008, the Hemp Initiative, consisting of NGOs and interest groups, proposed "to legalize personal cannabis use as well as to create a system of government-regulated cannabis distribution" (Room et al., 2010, p. 98). The Swiss parliament voted against this initiative and so did voters in the public referendum. It has been speculated that public attention on the Four Pillars policy, the framework which encapsulates heroin-related harm reduction initiatives and which was the issue of greater public concern at the time, led to a marginalisation of the cannabis debate. As a consequence, only 38% of voters in the November 2008 referendum on cannabis-law were in favour of legalising personal cannabis possession (Savary, 2009).

[132] Bundesgesetz über die Betäubungsmittel und die psychotropen Stoffe (Betäubungsmittelgesetz, BetmG), SR 812.121, vom 3. Oktober 1951 (Stand am 1. Oktober 2013).

3.4.5. Conclusion for proposals to introduce production initiatives for recreational use

This section discussed proposals to allow cannabis production for recreational purposes. These ranged from plans to allow home growing of cannabis for personal use (discussed in Chile, Portugal and Switzerland), to a proposal to create Cannabis Social Clubs (in Portugal) and the suggested model of state-regulated production and distribution being discussed by the Copenhagen City Council. While a few of these proposals are still currently being discussed, others have already been rejected by the competent authorities in these countries. The wider international legal framework was not frequently considered in these discussions. To date, the state of affair in the countries discussed in this chapter is that production initiatives for recreational purposes are not allowed.

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antiseptica; Wetsvoorstel tot wijziging van de wet van 24 februari 1921betreffende het verhandelen van de giftstoffen, slaapmiddelen en verdovende middelen, ontsmettingsstoffen en antiseptica, teneinde het gebruik van cannabis uit het strafrecht te halen; Wetsvoorstel tot regeling van de teelt, de distributie en de verkoop van cannabis. (DOC 50 1888/004).

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